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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1884.**

No. 193.

CHARLES STUART WURTS AND ROBERT LENOX KENNEDY, PLAINTIFFS IN ERROR,

*vs.*

AMOS HOAGLAND, JAMES BOYD, AND WILLIAM L. JOHNSON, COMMISSIONERS OF DRAINAGE, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

**FILED APRIL 5, 1882.**

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1 *Order.*

New Jersey Supreme Court. June Term, 1879.

In the Matter of the Drainage of the Great Meadows, in the Counties of Warren and Sussex.

It is ordered by Mercer Beasley, Esq., chief justice of the supreme court, that Aaron Van Buskirk, Polhemus Cummins, Isaac Cummins, George H. Ayers, Jesse Adams, Moses Applegate, Amos Wilson, James W. Tims, Phœbe A. Wilson, Nelson N. Cummins, Silas Cummins, Eli Lundy, Ephraim Simanton, The Crane Iron Company, Charles Stuart Wurts, Robert Lenox Kennedy, and Jehiel G. Shipman be permitted to file objections, either separately or jointly, to the assessment lately made by Amos Hoagland, James Boyd, and Wm. L. Johnson, the said commissioners, upon their lands in the county of Warren, and that all parties have leave to take affidavits to be used upon the hearing of the said objections, and that the time for filing said objections be extended until the twenty-fifth day of October, 1879.

Let the above rule be entered in the minutes.
October 10, 1879.

M. BEASLEY, *Chief Justice.*

Entered October 11, 1879.

On motion of J. G. Shipman & Son, attorneys of said several objectors.

A true copy. BENJAMIN F. LEE, *Clerk.*

2 In the Matter of the Drainage of the Great Meadows, in the Counties of Warren and Sussex, on Assessment lately made by Amos Hoagland, James Boyd, and William L. Johnson, Commissioners.

On objections to the assessment of Amos Hoagland, James Boyd, and William L. Johnson, commissioners, filed in the office of the clerk of the supreme court on the 8th day of September, A. D. 1879 and in the clerk's office of Warren county September 18th, 1879.

The Crane Iron Company, a corporation of the State of Pennsylvania, comes and objects to the last assessment made by the said commissioners and filed as above stated on the lands named in the said assessment as the lands of the Crane Iron Company, for the following reasons:

I. Because the drainage of the said meadows is of no use or benefit to the lands assessed against these objectors.

II. Because a very large portion of the lands so assessed against these objectors are far above and beyond the influence of the said drainage.

III. Because said drainage can be of no possible benefit to these objectors, because they cannot in any way effect the lands of these objectors.

IV. Because this court and the court of errors and appeals have decided that an assessment made in all respects as this assessment is made was illegal and void, and the attempt of the said commissioners to lay this assessment in its present form is contrary to the express decision of this court and the court of errors, and is illegal and void.

V. Because the said assessment is fraudulent and void, and was fraudulently made by the said commissioners, in this, that the said commissioners have assessed upon these objectors and others a sum of money sufficient to pay them the sum of six thousand dollars, or thereabouts, in lump for their services and expenses as commissioners, when no such sum of money was either justly or legally due them under the said act for services and expenses, as commissioners, nor had been justly expended by them, and which they well knew at the time they made the said assessment, and when objections were made to the said sum the said commissioners refused to correct it in any way.

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VI. Because the said commissioners fraudulently and knowingly refused to borrow the necessary sum for doing the work hereafter mentioned, but contracted the said work of said drainage to persons at a rate far beyond the actual value of the said work, to be paid with the bonds of the said commissioners, and then passed the said bonds to the said contractors, well knowing that the said contractors intended to and the said contractors passed off said bonds at rates varying from sixty to eighty and ninety cents on the dollar.

VII. Because the said drainage is not now, and never will be, of any benefit to the lands assessed to these objectors, and wholly fails to drain the lands of these objectors, and the commissioners knew it would not be, yet they laid the heavy assessment upon the said lands.

VIII. Because the said system of drainage has never yet been completed and executed, and the said commissioners only pretend it is completed to evade the decision of the court heretofore made against their former assessment.

IX. Because the said commissioners, in making their said assessment, have not measured the ground, nor estimated the benefit to each tract of land by the work as done, nor have they distributed, in making their said assessment, the benefit to each tract of land by the work as done, nor have they distributed the said assessment fairly, nor according to the benefit derived by each of said land owners mentioned in their assessment, but have levied an assessment to raise a certain sum of money which they claim has been expended, without any regard to the benefit to the land of the several land owners, but solely with reference to the ability of the several land owners to pay.

X. Because they cannot make an assessment until the work is fully completed and executed, and they can ascertain by actual measurement and observation and experience the benefit to be derived therefrom, and the said work is not now completed and executed.

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XI. Because the law under which the proceedings have been had

is in violation of the Constitution of the United States, and of this State also, and is void, because the proceedings are of no public benefit, but is a mere private enterprise, and is initiated on the judgment of five private land owners whose land may be of no real value, and taken the property of one private individual, against his will and consent, to pay for benefiting the lands of another private individual; that the right of eminent domain what exists in the State, exists only when the State can take the lands of an individual against his will for public use, and then only when just compensation first paid or tendered; but the law in question undertakes to take the property of an individual without any compensation, and actually compels him to pay large sums of money to pay for benefiting other person's lands.

XII. Because the said law is contrary to the principles of natural justice, and is void, inasmuch as it undertakes to take one man's property to pay for benefits done to another man's property.

XIII. Because the said commissioners, in making their assessment, committed errors in law, and erred also in the principles of the assessment so made by them.

XIV. Because the pretended benefits assessed by the said commissioners amounts to over one hundred and seven thousand dollars, when all the lands embraced within the said assessment, and within the said survey, are not worth anything like that sum of money, and will not sell for any such sum in the market, and the amount assessed upon these objectors' lands exceeds the value of the lands so assessed.

XV. Because the said assessment as laid upon the lands of the said The Crane Iron Company has been already set aside by this court as null and void, what opinion was affirmed by the court of errors; and the said commissioners, without any authority of law, and contrary to the express decision of this court and the court of errors, have undertaken to enforce said illegal assessment.

XVI. Because the said last-named assessment has been made in express violation of the decision of the court of errors in the case of Mary V. Wurts and these objectors, in setting aside the former assessment made against her and these objectors, and of the principles laid down by the said court in the said cases.

XVII. Because the last-named assessment is not made in conformity to the second section of the act under which the said commissioners acted, which provides that when the said assessment shall be refused it shall be again referred to the said commissioners, to be corrected in accordance with the decision of the court in that behalf; that said assessment has never been referred back to the said commissioners to be corrected in conformity with the decision of the court of errors, but the commissioners have undertaken to make a new assessment, which is in express conflict with said decision, and with the act, and the said commissioners have reaffirmed in all respects their former assessment made against these objectors, in direct violation of the judgment and authority of this court and

the court of errors and appeals, and the said assessment ought to be set aside.

XVIII. Because the said assessment is in many other respects illegal, and ought to be set aside.

J. G. SHIPMAN & SON,
*Attorneys of said Objectors.*

A true copy. BENJAMIN F. LEE, *Clerk.*

In the Matter of the Drainage of the Great Meadows, in the Counties of Warren and Sussex, on Assessment lately made by Amos Hoagland, James Boyd, and William L. Johnson, Commissioners.

On objections to the assessment of Amos Hoagland, James Boyd, and William L. Johnson, commissioners, filed in the office
6 of the clerk of the supreme court on the 8th day of September, A. D. 1879, and in the clerk's office of Warren county September 10th, 1877.

Aaron Van Buskirk, Polhemus Cummins, Isaac Cummins, George H. Ayers, Jesse Adams, Moses Applegate, Amos Wilson, James W. Tims, Phœbe A. Wilson, Nelson N. Cummins, Silas Cummins, Eli Lundy, Ephraim Simanton, come and object to the assessment made upon their respective lands by Amos Hoagland, James Boyd, and William L. Johnson, commissioners, which was filed in the office of the clerk of the supreme court on the —— day of September, 1879, and in Warren county clerk's office, for the following reasons:

I. Because the said assessment is fraudulent and void, and was fraudulently made by said commissioners, in this, that the said commissioners have assessed upon the lands of these objectors and others a sum of money sufficient to pay them the sum of six thousand dollars or thereabouts in lump for their services and expenses as commissioners, when no such sum of money was either justly or legally due them under the said act, nor had been justly expended by them, and which they well knew at the time they made said assessment, and when objections were made to the said sum the said commissioners refused to correct it in any way.

II. Because the said commissioners fraudulently and knowingly refused to borrow the necessary sum for doing the said work hereinafter mentioned, but contracted the work of said drainage to persons at a rate far beyond the actual value of the said work, to be paid with bonds of the said commissioners, and then passed the said bonds to said contractors, well knowing that the said contractors intended to and the contractors did pass off said bonds at rates varying from sixty to eighty and ninety cents on the dollar.

III. Because the said commissioners advertised the filing of the said assessment and where deposited in two newspapers
7 printed in an extreme corner of the county, and of very limited circulation, so that few persons could see it, and therefore land owners would have no opportunity to object.

IV. Because the said drainage is not of the least benefit to the lands of these objectors, and the said commissioners knew when

they made said assessment that it was not, and never would benefit them by said drainage; nevertheless they laid the heavy assessment upon the said lands which they have reported.

V. Because the said system of drainage has never yet been completed by the said commissioners, and the said commissioners only published it so to evade the decision of the court heretofore made against their former assessment.

VI. Because the said commissioners, in making their assessment, have not measured the ground, nor estimated the benefit of each tract of land by the work as done, nor have they distributed the said assessment fairly, nor according to the benefit derived by each of said land owners mentioned in their assessment, but have levied an assessment to raise a certain sum on money which they claim has been expended without any regard to the benefit to the land of the several land owners, but solely with reference to the ability of the several land owners to pay.

VII. Because they cannot make an assessment until the work is fully completed, and they can ascertain by actual measurement and observation and experience the benefit to be derived therefrom, and the said work is not now completed.

VIII. Because the said drainage is not now, and never will be, any benefit to the lands of these objectors.

IX. Because the law under which the proceedings have been had is absolutely unconstitutional and void, because the proceedings is of no public benefit whatever, but is a mere private enterprise, and is initiated on the judgment of five private land owners, and taken the property of one private individual to pay for benefiting the lands of another private individual, against the will and consent of the said first land owner; that the right of eminent domain what
8 exists in the State, exists only when the State can take the lands of an individual against his will for public use, and then only upon just compensation; but this law undertakes to take the property of an individual without any compensation at all, and actually compel him to pay large sums of money for benefiting other people's land.

X. Because the said law is contrary to the principles of natural justice, and is void, inasmuch as it undertakes to take one man's property to pay for benefits done to another man's property.

XI. Because the said commissioners, in making their as[sess]ment, committed errors in law, and erred also in the principles of the assessment made by them.

XII. Because the pretended benefits assessed by the said commissioners amounts to over one hundred and seven thousand dollars, when all the lands embraced within the said assessment and within the said survey are not worth anything like that sum of money, and will not sell for any such sum in the market, and the amount assessed upon the lands of each of these objectors exceeds the value of the lands so assessed.

XIII. The said Aaron Van Buskirk especially objects to the said assessment on two tracts of land in and as a part as lot No. 50—14 41-100 acres—$486.10, and lot 93—24 66-100—$690.48, and said to

belong to Selden T. Scranton, because said Scranton was not the owner when said assessment was made, having been sold under the foreclosure of a mortgage existing on said lands prior to the said assessment, and the said commissioners were made defendants in said suit, and set up no claim, and the said lands were sold clear of said assessment, and bought by this objector clear of said assessment, and because none of this objector's lands are benefited.

XIV. And the said Polhemus Cummins specially objects to said assessment laid upon his lands, because his lands so assessed lay entirely above and outside of the influence of said drainage, which said commissioners must have known, and did know, and his land is not the least benefited.

XV. James W. Tims especially objects to the assessment laid upon his lands, for that his lands so assessed are entirely outside of
9 the geological survey made and filed in the office of the secretary of State, and are not in the least benefited by the said drainage, and the said commissioners have without any warrant or authority of law whatever assessed his said lands.

XVI. And the said Phœbe A. Wilson also specially objects to the said assessment to her land, because it is out of the geological survey, filed as above stated, and her land lies over a mile from the Pequest river, is not benefited in the least by the assessment, and the said commissioners, without any authority or right or law, have assessed her said lands.

XVII. Because the said lands are assessed to Jesse Welsh when the title is not in him, but In the objector, and no notice given to this objector as required by law.

XVIII. Ephraim Simanton objects to said assessment laid upon his lands, specially, because his lands assessed are not within the geological survey, as filed, and are not within the Great Meadows at all, and because the said lands are not at all benefited, and because the said commissioners have injured his said land more than they have benefited them, and because the said assessment is made on his lands without any authority of law whatsoever.

XIX. Isaac Cummins especially objects to the assessment laid upon his lands in addition to above, because his lands are far above high water mark, not within the influence of said drainage, and have been cultivated for years and years, all of which was known to said commissioners.

XX. Silas Cummins further objects to said assessment on his lands, because they are situated more than one mile from the said Pequest river, but above high water, entirely outside of the influence of said drainage, not benefited at all, and have been cultivated for years, as commissioners well knew.

XXI. Eli Lundy especially objects to said assessment on his lands, because his lands are not at all benefited, as commissioners well knew, and are assessed without any authority of law.

XXII. George H. Ayers, Jesse Adams, Moses Applegate and Amos Wilson each object specially to the assessment made upon their
10 land in addition to the reasons given above, because the said drainage is not completed over their lands, and does not cover

their said lands, the said commissioners have never drained their said lands at all, and lands so assessed are not within the influence of said drainage at all, and are not in the least benefited, and are assessed without any authority of law whatever.

XXIII. And each of the persons above named say the said assessment should be set aside as against them, and each of them, because they say that the said assessment is made in direct violation of the decision of the court of errors and appeals made in the case of Mary V. Wurts, and is in direct conflict with the requirements of the act on this subject.

And they further say that there are many other errors in the said assessment for which it ought to be set aside.

J. G. SHIPMAN & SON,
*Attorneys of Objectors.*

A true copy. BENJAMIN F. LEE, *Clerk.*

In the Matter of the Drainage of the Great Meadows, in the Counties of Warren and Sussex, on Assessment lately made by Amos Hoagland, James Boyd, and William L. Johnson, Commissioners.

On objections to the assessment of Amos Hoagland, James Boyd and William L. Johnson, commissioners, filed in the office of the clerk of the supreme court, on the 8th day of September, A. D., 1879, and in the clerk's office of Warren county, September 10th, 1879.

Charles Stuart Wurts and Robert Lenox Kennedy, who are the devisees under the will of Mary V. Wurts, deceased, come and object to the last assessment made by the said commissioners, and filed as above stated on the lands named in the said assess-
11 ment, on the lands of Mrs. Mary V. Wurts, the said Charles Stuart Wurts being a resident of Pennsylvania, and the said Robert Lenox Kennedy being a resident of the State of New York, for the following reasons:

I. Because the said assessment is made against Mrs. Mary V. Wurts, when the commissioners knew at the time they made the assessment that the said Mary V. Wurts was deceased.

II. Because the drainage of the said meadows is of no use or benefit to the lands assessed against the said Mary V. Wurts belonging to objectors.

III. Because a very large portion of the lands so assessed are far above and beyond the influence of the said drainage, and had long been cultivated.

IV. Because the said assessment is fraudulent and void, and was fraudulently made by the said commissioners, in this, that the said commissioners have assessed upon these objectors in the name of Mary V. Wurts and others, a sum of money sufficient to pay them the sum of six thousand dollars, or thereabouts, in lump, for their services and expenses as commissioners, when no such sum of money was either justly or legally due them under the said act for services

and expenses as commissioners, nor had been justly expended by them, and which they well knew at the time they made said assessment, and when objections were made to the said sum the said commissioners refused to correct it in any way.

V. Because the said commissioners fraudulently and knowingly refused to borrow the necessary sum for doing the said work hereinafter mentioned, but contracted the work of said drainage to persons at a rate far beyond the actual value of the said work, to be paid with bonds of the said commissioners, and then passed the said bonds to said contaactors, well knowing that the said contractors intended to and the contractors did pass off said bonds at rates varying from sixty to eighty and ninety cents on the dollar.

VI. Because they did not advertise the filing of the said report according to the legal requirements, but intentionally abstained from so doing.

12 VII. Because the said drainage is not now, and never will be, any benefit to the lands assessed to the said Mary V. Wurts, and the commissioners knew it would not be, yet they laid the heavy assessment upon the said lands.

VIII. Because the said system of drainage has never yet been completed; the said commissioners only pretend it is completed to evade the decision of the court heretofore made against their former assessment.

IX. Because the said commissioners, in making their assessment, have not measured the ground, nor estimated the benefit to each tract of land by the work as done, nor have they distributed, in making their said assessment, the benefit to each tract of land by the work done, nor have they distributed the said assessment fairly, nor, according to the benefit derived by each of said land owners mentioned in their assessment, but have levied an assessment to raise a certain sum of money which they claim has been expended without any regard to the benefit to the land of the several land owners, but solely with reference to the ability of the several land owners to pay.

X. Because they cannot make an assessment until the work is fully completed, and they can ascertain by actual measurement and observation and experience the benefit to be derived therefrom, and the said work is not completed.

XI. Because the law under which the proceedings have been taken is in violation of the Constitution of the United States, and of this State, and is void, because the said proceeding is of no public benefit, but is a mere private enterprise, and is initiated on the judgment of five private land owners, whose land may be of no real value, and takes the property of one private individual, against his will and consent, to pay for benefiting the lands of another private individual, that the right of eminent domain which exists in the State exists only when the State can take the lands of an individual against his will for public use, and then only upon just compensation first paid or tendered, but the law in question undertakes to take the property of an individual without any compensation, and

actually compels him to pay large sums of money for benefiting other person's land.

13 XII. Because the said law is contrary to the principles of natural justice, and is void, inasmuch as it undertakes to take one man's property to pay for benefits done to another man's property.

XIII. Because the said commissioners, in making their assessment, committed error in law, and erred also in the principles of the assessment so made by them.

XIV. Because the pretended benefits assessed by the said commissioners amount to over one hundred and seven thousand dollars, when all the lands embraced within the said assessment and within the said survey are not worth anything like that sum of money, and will not sell for that sum of money in the market, and the amount assessed upon these objectors' lands exceed the value of the lands so assessed.

XV. Because said last-named assessment has been made in express violation of the decision of the court of errors in the case of Mary V. Wurts in setting aside the former assessment made against said Mary V. Wurts.

XVI. Because the said last-named assessment is not made in conformity to the second section of the act under which the said commissioners acted, which provides that when the said assessment shall be revised, it shall be again referred to the said commissioners to be corrected, in accordance with the decision of the court in that behalf that said assessment has never been referred back to the said commissioners to be corrected in conformity with the decision of the court of errors, but the commissioners have undertaken to make a new assessment, which is in express conflict with said decision and with the act, and illegally and contrary to said decision undertakes to reaffirm the assessment which this court and the court of errors and appeals has once set aside, thus continuing the power and authority of said court.

XVII. Because this court and the court of errors and appeals have decided that an assessment made in all respects as this assessment is made was illegal and void, and the attempt of the said commissioners to try this assessment in its present form is contrary to the

14 express decision of this court and the court of errors, and is illegal and void.

XVIII. Because the said assessment is in many other respects illegal, and ought to be set aside.

J. G. SHIPMAN & SON,
*Attorneys of Objectors.*

A true copy. BENJAMIN F. LEE, *Clerk.*

To the honorable the supreme court of the State of New Jersey:

The report of Amos Hoagland, James Boyd, and William L. Johnson, commissioners appointed by the said supreme court.

The total amount of excavated measured material in the whole nine and three-quarter ($9\frac{3}{4}$) miles in channel of Pequest river, of

rock and earth, is one hundred and eighty-two thousand (182,000) cubic yards, and a large amount of logs, stumps, and other drift, not reducible to numerical contents.

The measurement of excavation on the tributaries is nine thousand two hundred cubic yards of earthy material, together with a great quantity of obstructions removed, not thus definable.

Almost the whole work has been executed submerged, or in contact with water, and thus unavoidably with increased cost over ordinary excavations.

We have also enlarged and partially rebuilt three of the public bridges over the Pequest river, and removed several dams and obstructions not classified as excavation, but necessary to carry out the "plan" adopted by the managers of the geological survey, so that at the time and since the completion of the work the channel of the Pequest river and the improved tributaries are of sufficient "capacity to carry the stream within banks," as demonstrated by the great flood of December, 1878, said not to have been exceeded since 1841.

15 The total expense incurred is ninety-five thousand four hundred and eighty-eight dollars and seventeen cents ($95,488.17), classified as follows:

| | | |
|---|---|---|
| For commissioners' services, at $5 per day, for 6½ y'rs | | $3,757 80 |
| manager's expenses preparing "plan" | " | 300 00 |
| engineering and surveying during | " | 2,334 40 |
| assistant surveyor's services | " | 980 48 |
| laborers on survey | " | 451 01 |
| right of way | " | 539 00 |
| civil and legal expenses | " | 2,710 36 |
| int. paid on bonds & temporary loans | " | 13,171 95 |
| printing and advertising | " | 102 68 |
| excavation & work clearing and opening, | " | 71,140 49 |
| incidentals | " | 42 90 |
| | | $95,531 07 |

We have bonds issued to the amount of seventy-five thousand ($75,000) dollars, maturing in 1884, but redeemable at the option of the commissioners at any previous time, on notice, and the balance of the moneys expended has been raised on temporary loans.

During the progress of preparation, issue, and collection of the assessment provided for by law, and now commenced, which we have estimated to consume one and three quarter years, we have computed on reliable data, and experience thus far, that the additional expenses of the work will be as follows:

| | |
|---|---|
| For commissioners' services, at $5 per day | $600 00 |
| engineering and territorial surveys | 350 00 |
| civil and legal expenses | 2,000 00 |
| laborers assisting on land surveys | 100 00 |
| interest on loans 1¾ years | 9,315 00 |
| printing and advertising | 20 00 |
| | $12,385 00 |

Being twelve thousand three hundred and eighty-five dollars, which, added to the amount previously expended, as above set forth, makes the sum of one hundred and seven thousand nine
16 hundred and sixteen dollars and seven cents ($107,916.07), as the entire cost of the work when completed and paid for.

A true copy. BENJAMIN F. LEE, *Clerk.*

And your commissioners aforesaid now hereby submit this their report to the supreme court, as required by the act under which they were appointed, "together with a general description, or delineation of the land and territory, which, in their judgment, ought to contribute to said expense, as follows:

Tract No. 1,

owned by Jehiel G. Shipman, John W. Wyckoff, and others, containing ninety-one and forty-hundredths acres, bounded on the west by lands of Aaron Van Buskirk and T. P. Frome, and north and east by lands formerly belonging to Edwin G. Bulgin and George G. Bulgin.

Tract No. 5,

owned by Aaron Van Buskirk, containing twenty-three and fifty-hundredth acres, and bounded on the north by lands of Thomas P. Frome, on the east by lands of Shipman and Wyckoff, and others, on the south by lands of Abigail Schryber and Simon A. Cummins, and on the west by lands of Lewis H. Martenis and Elizabeth Vreeland.

Tract No. 11,

owned by Aaron Van Buskirk, containing seven and thirty-nine hundredth acres, and bounded on the south by his other lands, on the east and north by Elizabeth Vreeland, and on the west by Michael C. Flummerfelt.

Tract No. 14,

owned by Aaron Van Buskirk, containing forty-two acres, and bounded on the west by his other lands, on the south and east by lands of Thomas P. Frome, on the north by lands of Patrick Welsh, and on the east by lands of David Fleming.

Tract No. 19,

17 owned by Shipman & Wyckoff, and others, containing eleven and thirty-hundredths acres, and bounded on the south and east by lands formerly of E. G. and G. G. Bulgin, and on the north and west by lands of William I. Roe.

Tract No. 33,

owned by Shipman & Wyckoff, and others, containing fifty-three acres, and bounded on the north by lands of Swayze and Bulgin, on

the east by lands of Crane Iron Company, and formerly E. G. and G. G. Bulgin, on the south by lands of William I. Roe, and on the west by lands of Patrick Welsh.

Tract No. 34,

owned by The Crane Iron Company, containing twenty-seven acres, and bounded on the north and east by their other lands and lands of Isaac N. Vansickle, and on the south and west by lands of Shipman & Wyckoff and others.

Tract No. 35,

owned by the Crane Iron Company, containing thirty-eight and forty-seven-hundredths acres, and bounded on the north by their other lands, on the south by their other lands and lands of Isaac N. Vansickle, on the east by lands of Scranton and Henry, and on the west by lands of Swayze and Bulgin.

Tract No. 38,

owned by Shipman & Wyckoff, and others, containing nine acres, and bounded on the north and west by lands formerly of Bulgin, on the east by lands of Scranton and Henry, on the south by lands of William I. Roe.

Tract No. 41,

owned by Mary V. Wurts, containing two hundred and seventy-six acres, and bounded on the north by her other lands, on the south and east by lands of Selden T. Scranton, and on the west by lands of Robert L. Garrison.

Tract No. 57,

owned by Isaac Cummins, containing one hundred and five acres, and bounded on the south and east by his other lands, on the north by the lands of parties unknown and lands of Silas Cummins, and on the south and west by the lands of Polhemus Cummins.

18 Tract No. 59,

owned by Silas Cummins, containing twenty-five and twenty-five-hundredths acres, and bounded on the east by his other lands, on the north by lands of parties unknown, on the south and west by lands of Isaac Cummins.

Tract No. 60,

owned by Mary V. Wurts, containing three hundred and ninety-eight and eighty-eight-hundredths acres, and bounded on the east by her other lands, on the north by lands of Polhemus Cummins, estate of George Batley, deceased, Nelson N. Cummins, and others, on the south by lands of parties unknown, Henry Bell, and others, and on the west by Selden T. Scranton and Henry Bell.

Tract No. 61,

owned by Polhemus Cummins, containing four and eighty-hundredths acres, and bounded on the north and east by his other lands, and on the south and west by lands of Mary V. Wurts.

Tract No. 79,

owned by Jesse Adams, containing five acres, and bounded on the north by lands of Jesse Wilson, on the east by lands of John Lewis, on the south by lands of James W. Tims, and on the west by lands of Caleb R. Dickinson.

Tract No. 80,

owned by John Lewis, containing thirty-four and twenty-five-hundredths acres, and bounded on the east by his other lands, on the north by the lands of Jesse Wilson, on the south by lands of James W. Tims, and on the west by lands of Jesse Adams.

Tract No. 81,

owned by James W. Tims, containing forty and ninety-six-hundredths acres, and bounded on the north by lands of Jesse Adams and John Lewis, on the east and south by other lands of said Tims, and on the west by lands of Caleb R. Dickinson and Robert B. Cooper.

Tract No. 84,

owned by Eli Lundy, containing one hundred and fifty-four and eighty-five-hundredths acres, and bounded on the east by his other lands and lands of William C. Hibler, on the north by lands of John W. Vastbinder, James W. Tims, and others, and on the south and west by James Shotwell and Nelson N. Cummins.

Tract No. 118,

owned by George H. Ayers, containing sixty-five and eighty-five-hundredths acres, and bounded on the north by his other lands, on the east by lands of the estate of John Rutherford, deceased, on the south by lands of Ruel H. Drake and others, and on the west by lands of Amos Wilson.

Tract No. 119,

owned by Amos Wilson, containing seventy-six and five-hundredths acres, and bounded on the north by his other lands, on the east by the lands of George Ayers, on the south by the lands of Frances Ayers and Catharine Long, and on the west by lands of James Ayers and Andrew J. Dennis.

Tract No. 121,

owned by Moses Applegate, containing twenty and eight-hundredths acres, and bounded on the north by his other lands, on the east by

the east by lands of Crane Iron Company, and formerly E. G. and G. G. Bulgin, on the south by lands of William I. Roe, and on the west by lands of Patrick Welsh.

Tract No. 34,

owned by The Crane Iron Company, containing twenty-seven acres, and bounded on the north and east by their other lands and lands of Isaac N. Vansickle, and on the south and west by lands of Shipman & Wyckoff and others.

Tract No. 35,

owned by the Crane Iron Company, containing thirty-eight and forty-seven-hundredths acres, and bounded on the north by their other lands, on the south by their other lands and lands of Isaac N. Vansickle, on the east by lands of Scranton and Henry, and on the west by lands of Swayze and Bulgin.

Tract No. 38,

owned by Shipman & Wyckoff, and others, containing nine acres, and bounded on the north and west by lands formerly of Bulgin, on the east by lands of Scranton and Henry, on the south by lands of William I. Roe.

Tract No. 41,

owned by Mary V. Wurts, containing two hundred and seventy-six acres, and bounded on the north by her other lands, on the south and east by lands of Selden T. Scranton, and on the west by lands of Robert L. Garrison.

Tract No. 57,

owned by Isaac Cummins, containing one hundred and five acres, and bounded on the south and east by his other lands, on the north by the lands of parties unknown and lands of Silas Cummins, and on the south and west by the lands of Polhemus Cummins.

18 Tract No. 59,

owned by Silas Cummins, containing twenty-five and twenty-five-hundredths acres, and bounded on the east by his other lands, on the north by lands of parties unknown, on the south and west by lands of Isaac Cummins.

Tract No. 60,

owned by Mary V. Wurts, containing three hundred and ninety-eight and eighty-eight-hundredths acres, and bounded on the east by her other lands, on the north by lands of Polhemus Cummins, estate of George Batley, deceased, Nelson N. Cummins, and others, on the south by lands of parties unknown, Henry Bell, and others, and on the west by Selden T. Scranton and Henry Bell.

Tract No. 61,

owned by Polhemus Cummins, containing four and eighty-hundredths acres, and bounded on the north and east by his other lands, and on the south and west by lands of Mary V. Wurts.

Tract No. 79,

owned by Jesse Adams, containing five acres, and bounded on the north by lands of Jesse Wilson, on the east by lands of John Lewis, on the south by lands of James W. Tims, and on the west by lands of Caleb R. Dickinson.

Tract No. 80,

owned by John Lewis, containing thirty-four and twenty-five-hundredths acres, and bounded on the east by his other lands, on the north by the lands of Jesse Wilson, on the south by lands of James W. Tims, and on the west by lands of Jesse Adams.

Tract No. 81,

owned by James W. Tims, containing forty and ninety-six-hundredths acres, and bounded on the north by lands of Jesse Adams and John Lewis, on the east and south by other lands of said Tims, and on the west by lands of Caleb R. Dickinson and Robert B. Cooper.

Tract No. 84,

owned by Eli Lundy, containing one hundred and fifty-four and eighty-five-hundredths acres, and bounded on the east by his other lands and lands of William C. Hibler, on the north by lands of John W. Vastbinder, James W. Tims, and others, and on the south and west by James Shotwell and Nelson N. Cummins.

Tract No. 118,

owned by George H. Ayers, containing sixty-five and eighty-five-hundredths acres, and bounded on the north by his other lands, on the east by lands of the estate of John Rutherford, deceased, on the south by lands of Ruel H. Drake and others, and on the west by lands of Amos Wilson.

Tract No. 119,

owned by Amos Wilson, containing seventy-six and five-hundredths acres, and bounded on the north by his other lands, on the east by the lands of George Ayers, on the south by the lands of Frances Ayers and Catharine Long, and on the west by lands of James Ayers and Andrew J. Dennis.

Tract No. 121,

owned by Moses Applegate, containing twenty and eight-hundredths acres, and bounded on the north by his other lands, on the east by

lands of Amos Wilson and James N. Gibbs, and on the west by lands of Andrew J. Dennis.

Tract No. 122,

owned by Amos Wilson, containing six and eighteen-hundredths acres, and bounded on the south by his other lands, on the north by the Pequest river, on the east by lands of George H. Ayers, and on the west by lands of Moses Applegate.

Tract No. 123,

owned by George H. Ayers, containing thirteen and fifty-seven-hundredths acres, and bounded on the south by his other lands, on the east by lands of Jesse Adams, and on the west by lands of Amos Wilson, on the north by the Pequest river.

Tract No. 125,

owned by Jesse Adams, containing fifty-five and thirty-seven-hundredths acres, and bounded on the north and south by his other lands, on the east by lands of Hezekiah Drake, and on the west by lands of James N. Gibbs and George H. Ayers.

A true copy. BENJ. F. LEE, *Clerk.*

*Assessment made by Amos Hoagland and others, Commissioners, September 6, 1879.*

The undersigned, commissioners named in the order made by the supreme court of this State, bearing date on the twenty-third day of June, A. D. 1879, a copy of which is hereto annexed, do hereby certify that in pursuance of the directions contained in said order, we have distributed and assessed, and do hereby distribute and assess, the amount of the expense of the work done by us as heretofore reported to said court and as mentioned in said order; that is to say, the sum of one hundred and seven thousand nine hundred and sixteen dollars and seven cents, upon the lands embraced within the territory heretofore reported by us, as that which, in our judgment, ought to contribute to such expense in proportion, as nearly as we can judge, to the benefits derived from said drainage by the several parcels of land to be assessed; that is to say, the particulars of such distribution and assessment are contained in and shown by the following, in which we have designated the several tracts by the name of the owner or occupier so far as we could learn the same, and also by number corresponding with our report heretofore made to and confirmed by the supreme court:

| No. of tract. | Designation. | Quantity. | Amount. |
|---|---|---|---|
| | | *Acres.* | |
| 1 | Jehiel G. Shipman, J. W. Wyckoff, and others | 91.40 | $2,559 20 |
| 2 | John P. Merrill | 12.46 | 348 88 |
| 3 | John Merrill | 3.60 | 100 80 |
| 4 | Simon A. Cummins | 5.25 | 147 00 |
| 5 | Aaron Van Buskirk | 23.50 | 658 00 |
| 6 | Abigail Schryber | 0.50 | 14 00 |
| 7 | Lewis H. Martenis | 10.27 | 287 56 |
| 8 | Elizabeth Vreeland | 30 | 840 00 |
| 21 | | | |
| 9 | Richard Smith | 18.75 | $525 00 |
| 10 | Elizabeth Vreeland | 5.80 | 162 40 |
| 11 | Aaron Van Buskirk | 7.39 | 206 92 |
| 12 | Michael C. Flumerfelt | 0.61 | 17 08 |
| 13 | Thomas P. Frome | 76.97 | 1,739 40 |
| 14 | Aaron Van Buskirk | 42 | 940 00 |
| 15 | Patrick Welsh | 40 | 900 00 |
| 16 | David Fleming | 14.17 | 396 76 |
| 17 | Michael C. Flumerfelt | 17 | 476 00 |
| 18 | E. and G. Bulgin | 37.76 | 1,057 28 |
| 19 | J. G. Shipman and others | 11.30 | 316 40 |
| 20 | William I. Roe | 118.50 | 2,962 50 |
| 21 | Estate Jacob C. Welsh, Jr. | 41.78 | 935 60 |
| 22 | Isaac W. Vansickle | 3.56 | 89 00 |
| 23 | Garret L. Hann | 43.55 | 996 00 |
| 24 | Jacob Hann | 38.40 | 868 00 |
| 25 | Nathan Hoagland | 37.87 | 857 40 |
| 26 | Nelson R. Shotwell | 20 | 430 00 |
| 27 | Garret L. Hann | 15.80 | 395 00 |
| 28 | Lewis T. Kishpaugh | 33 | 825 00 |
| 29 | Charles Scranton and Eugene T. Henry | 71.75 | 1,793 75 |
| 30 | Unknown | 11.44 | 286 00 |
| 31 | Patrick Welsh | 23.85 | 429 30 |
| 32 | James A. Swayze and E. G. and G. G. Bulgin | 50.60 | 910 80 |
| 33 | Shipman and others | 53 | 1,060 00 |
| 34 | Crane Iron Company | 27 | 540 00 |
| 35 | Crane Iron Company | 38.47 | 692 46 |
| 36 | Isaac N. Vansicke | 15 | 300 00 |
| 37 | E. G. and G. G. Bulgin | 28.68 | 573 60 |
| 38 | Jehiel G. Shipman and others | 9 | 180 00 |
| 39 | Charles Scranton and Eugene T. Henry | 123.25 | 2,218 50 |

| No. of tract. | Designation. | Quantity. | Amount. |
|---|---|---|---|
| | | *Acres.* | |
| 40 | Robert L. Garrison | 70 | $1,260 00 |
| 41 | Mary V. Wurts | 276 | 5,568 00 |
| 42 | Selden T. Scranton | 100 | 2,500 00 |
| 22 | | | |
| 43 | Sarah Freeland | 99.60 | 2,490 00 |
| 44 | E. G. and G. G. Bulgin | 7.42 | 207 76 |
| 45 | John F. Vansickle | 7.42 | 207 76 |
| 46 | E. G. and G. G. Bulgin | 53 | 1,484 00 |
| 47 | E. G. and G. G. Bulgin | 4.75 | 133 00 |
| 48 | Caleb Aber | 0.60 | 16 80 |
| 49 | John Green | 2.13 | 57 64 |
| 50 | Selden T. Scranton | 14.40 | 403 20 |
| 51 | Charles Scranton | 60.30 | 1,688 40 |
| 52 | Mary Green | 87.50 | 2,187 50 |
| 53 | Charles Scranton and Andrew J. Cummins | 6.05 | 151 25 |
| 54 | Polhemus Cummins | 223 | 4,626 21 |
| 55 | Henry Bell | 68 | 1,700 00 |
| 56 | Selden T. Scranton | 30 | 750 00 |
| 57 | Isaac Cummins | 105 | 1,890 00 |
| 58 | Unknown | 49.60 | 1,240 00 |
| 59 | Silas Cummins | 25.25 | 454 50 |
| 60 | Mary V. Wurts | 398.88 | 7,779 84 |
| 61 | Polhemus Cummins | 4.80 | 86 40 |
| 62 | Estate of George Botley | 9.47 | 189 40 |
| 63 | Lewis Young | 144.90 | 3,273 00 |
| 64 | Selden T. Scranton | 46.12 | 1,153 00 |
| 65 | Selden T. Scranton | 31.25 | 781 25 |
| 66 | John S. Little | 85 | 2,121 00 |
| 67 | E. G. and G. G. Bulgin | 18.50 | 462 50 |
| 68 | Selden T. Scranton | 124.85 | 3,121 25 |
| 69 | Jesse Adams, guardian for White. | 14 | 140 00 |
| 70 | Adam Stiff | 23.22 | 278 64 |
| 71 | John A. Wilson | 44.95 | 539 40 |
| 72 | Lewis Riper | 1.50 | 67 50 |
| 73 | Caleb R. Dickerson | 38.80 | 582 00 |
| 74 | John Vastbinder | 23.38 | 467 60 |
| 75 | Jacob Waterfield | 2.50 | 62 50 |
| 76 | Abner Wilson | 11.25 | 281 25 |
| 77 | Samuel Hardin | 5 | 125 60 |
| 78 | Robert B. Cooper | 11.60 | 232 00 |
| 23 | | | |
| 79 | Jesse Adams | 5 | 90 00 |

| No. of tract. | Designation. | Quantity. | Amount. |
|---|---|---|---|
| | | *Acres.* | |
| 80 | John Lewis | 34.25 | $616 50 |
| 81 | James W. Tims | 40.96 | 737 28 |
| 82 | Samuel Dawnelly | 1.04 | 18 72 |
| 83 | Wm. C. Hibler | 2.80 | 50 40 |
| 84 | Eli Lundy | 154.85 | 3,487 30 |
| 85 | Wm. C. Hibler | 48.10 | 1,202 50 |
| 86 | Estate of John Rutherford | 10.80 | 270 00 |
| 87 | Alfred Buckley | 32.55 | 813 75 |
| 88 | Est. of Dan'l Cummins | 118.80 | 2,488 40 |
| 89 | James Shotwell | 44.80 | 1,120 00 |
| 90 | Nelson N. Cummins | 336.62 | 7,459 16 |
| 91 | E. G. & G. G. Bulgin | 75 | 21 00 |
| 92 | John Green | 43.85 | 1,227 80 |
| 93 | Selden T. Scranton | 24.66 | 690 48 |
| 94 | E. G. & G. G. Bulgin | 40.90 | 818 00 |
| 95 | Elizabeth S. Post | 4.25 | 42 50 |
| 96 | James K. Swayze | 13.20 | 66 00 |
| 97 | Patrick Larkin and John Dunn | 35.25 | 282 00 |
| 98 | Andrew J. Cummins | 17 | 204 00 |
| 99 | Robert Little | 41.50 | 498 00 |
| 100 | Aaron Howell | 34.40 | 688 00 |
| 101 | John Green | 3 | 75 00 |
| 102 | Ephraim Simanton | 14.45 | 404 60 |
| 103 | Thomas J. Parks | 1 | 20 00 |
| 104 | Andrew J. Cummins | 6 | 120 00 |
| 105 | John P. Merrill | 1.68 | 33 60 |
| 106 | Formerly owned by Nancy Schmuck, present owner unknown | 6.08 | 152 00 |
| 107 | Phœbe Shotwell's estate | 21.42 | 535 50 |
| 108 | Hiram Staples | 52 | 13 00 |
| 109 | James Ayers | 34.49 | 517 35 |
| 110 | Francis Ayers and Catharine Long | 49.43 | 247 15 |
| 111 | Estate of Jno. Rutherford | 56.18 | 168 54 |
| 112 | Estate of Archibald Ayers | 20.70 | 62 10 |
| 24 | | | |
| 113 | William Willet | 18.37 | 55 11 |
| 114 | Estate of Jno. Rutherford | 19.13 | 38 26 |
| 115 | Estate of Jno. Rutherford | 186.66 | 373 32 |
| 116 | Estate of Jno. Hardin | 11.26 | 22 52 |
| 117 | Reuel H. Drake | 10.60 | 31 80 |
| 118 | George H. Ayers | 65.85 | 257 55 |

| No. of tract. | Designation. | Quantity. | Amount. |
|---|---|---|---|
| | | *Acres.* | |
| 40 | Robert L. Garrison | 70 | $1,260 00 |
| 41 | Mary V. Wurts | 276 | 5,568 00 |
| 42 | Selden T. Scranton | 100 | 2,500 00 |
| 22 | | | |
| 43 | Sarah Freeland | 99.60 | 2,490 00 |
| 44 | E. G. and G. G. Bulgin | 7.42 | 207 76 |
| 45 | John F. Vansickle | 7.42 | 207 76 |
| 46 | E. G. and G. G. Bulgin | 53 | 1,484 00 |
| 47 | E. G. and G. G. Bulgin | 4.75 | 133 00 |
| 48 | Caleb Aber | 0.60 | 16 80 |
| 49 | John Green | 2.13 | 57 64 |
| 50 | Selden T. Scranton | 14.40 | 403 20 |
| 51 | Charles Scranton | 60.30 | 1,688 40 |
| 52 | Mary Green | 87.50 | 2,187 50 |
| 53 | Charles Scranton and Andrew J. Cummins | 6.05 | 151 25 |
| 54 | Polhemus Cummins | 223 | 4,626 21 |
| 55 | Henry Bell | 68 | 1,700 00 |
| 56 | Selden T. Scranton | 30 | 750 00 |
| 57 | Isaac Cummins | 105 | 1,890 00 |
| 58 | Unknown | 49.60 | 1,240 00 |
| 59 | Silas Cummins | 25.25 | 454 50 |
| 60 | Mary V. Wurts | 398.88 | 7,779 84 |
| 61 | Polhemus Cummins | 4.80 | 86 40 |
| 62 | Estate of George Botley | 9.47 | 189 40 |
| 63 | Lewis Young | 144.90 | 3,273 00 |
| 64 | Selden T. Scranton | 46.12 | 1,153 00 |
| 65 | Selden T. Scranton | 31.25 | 781 25 |
| 66 | John S. Little | 85 | 2,121 00 |
| 67 | E. G. and G. G. Bulgin | 18.50 | 462 50 |
| 68 | Selden T. Scranton | 124.85 | 3,121 25 |
| 69 | Jesse Adams, guardian for White. | 14 | 140 00 |
| 70 | Adam Stiff | 23.22 | 278 64 |
| 71 | John A. Wilson | 44.95 | 539 40 |
| 72 | Lewis Riper | 1.50 | 67 50 |
| 73 | Caleb R. Dickerson | 38.80 | 582 00 |
| 74 | John Vastbinder | 23.38 | 467 60 |
| 75 | Jacob Waterfield | 2.50 | 62 50 |
| 76 | Abner Wilson | 11.25 | 281 25 |
| 77 | Samuel Hardin | 5 | 125 00 |
| 78 | Robert B. Cooper | 11.60 | 232 00 |
| 23 | | | |
| 79 | Jesse Adams | 5 | 90 00 |

| No. of tract. | Designation. | Quantity. | Amount. |
|---|---|---|---|
| | | *Acres.* | |
| 80 | John Lewis | 34.25 | $616 50 |
| 81 | James W. Tims | 40.96 | 737 28 |
| 82 | Samuel Dawnelly | 1.04 | 18 72 |
| 83 | Wm. C. Hibler | 2.80 | 50 40 |
| 84 | Eli Lundy | 154.85 | 3,487 30 |
| 85 | Wm. C. Hibler | 48.10 | 1,202 50 |
| 86 | Estate of John Rutherford | 10.80 | 270 00 |
| 87 | Alfred Buckley | 32.55 | 813 75 |
| 88 | Est. of Dan'l Cummins | 118.80 | 2,488 40 |
| 89 | James Shotwell | 44.80 | 1,120 00 |
| 90 | Nelson N. Cummins | 336.62 | 7,459 16 |
| 91 | E. G. & G. G. Bulgin | 75 | 21 00 |
| 92 | John Green | 43.85 | 1,227 80 |
| 93 | Selden T. Scranton | 24.66 | 690 48 |
| 94 | E. G. & G. G. Bulgin | 40.90 | 818 00 |
| 95 | Elizabeth S. Post | 4.25 | 42 50 |
| 96 | James K. Swayze | 13.20 | 66 00 |
| 97 | Patrick Larkin and John Dunn | 35.25 | 282 00 |
| 98 | Andrew J. Cummins | 17 | 204 00 |
| 99 | Robert Little | 41.50 | 498 00 |
| 100 | Aaron Howell | 34.40 | 688 00 |
| 101 | John Green | 3 | 75 00 |
| 102 | Ephraim Simanton | 14.45 | 404 60 |
| 103 | Thomas J. Parks | 1 | 20 00 |
| 104 | Andrew J. Cummins | 6 | 120 00 |
| 105 | John P. Merrill | 1.68 | 33 60 |
| 106 | Formerly owned by Nancy Schmuck, present owner unknown | 6.08 | 152 00 |
| 107 | Phœbe Shotwell's estate | 21.42 | 535 50 |
| 108 | Hiram Staples | 52 | 13 00 |
| 109 | James Ayers | 34.49 | 517 35 |
| 110 | Francis Ayers and Catharine Long | 49.43 | 247 15 |
| 111 | Estate of Jno. Rutherford | 56.18 | 168 54 |
| 112 | Estate of Archibald Ayers | 20.70 | 62 10 |
| 24 | | | |
| 113 | William Willet | 18.37 | 55 11 |
| 114 | Estate of Jno. Rutherford | 19.13 | 38 26 |
| 115 | Estate of Jno. Rutherford | 186.66 | 373 32 |
| 116 | Estate of Jno. Hardin | 11.26 | 22 52 |
| 117 | Reuel H. Drake | 10.60 | 31 80 |
| 118 | George H. Ayers | 65.85 | 257 55 |

| No. of tract. | Designation. | Quantity. | Amount. |
|---|---|---|---|
| | | *Acres.* | |
| 119 | Amos Wilson | 76.05 | $760 50 |
| 120 | Andrew J. Dennis | 19.78 | 435 16 |
| 121 | Moses Applegate | 20.08 | 301 20 |
| 122 | Amos Wilson | 6.18 | 30 90 |
| 123 | George H. Ayers | 13.57 | 40 71 |
| 124 | James N. Gibbs | 31.67 | 158 35 |
| 125 | Jesse Adams | 55.37 | 110 74 |
| 126 | Ella Craig | 20.37 | 40 74 |
| 127 | Hezekiah Drake | 27.53 | 55 06 |
| 128 | Elisa B. Lewis | 32.19 | 64 38 |
| | | 5,520.68 | $107,916 07 |

In the Matter of the Application of the Board of Managers of the Geological Survey for the Appointment of Commissioners to Superintend the Drainage of the "Great Meadows," on the Pequest River, in the Counties of Warren and Sussex.

And it appearing to the satisfaction of the court by due proof that reasonable notice of the said application has been put up, published, and served, that is to say, that said notice was published in two newspapers in the said county of Warren, and also in two newspapers in said county of Sussex, for at least six weeks previous to the first day of this term of this court, at least once in each week, and that printed copies of the same notice were set in five of the most public places in each of the townships in which any of the said tracts of lands is situate, and nearest thereto, that is to
25 say, in the townships of Independence and Hope, in the county of Warren, and in the township of Green, in the county of Sussex, at least six weeks before the first day of this term of this court, and also that a printed copy of said notice was served at least four weeks before the first day of this term, personally, upon John Green, and upon Ephraim Simanton, they being persons whose property may be taken, or specially damaged, by the execution of the said plan of drainage.

A true copy. BENJAMIN F. LEE, *Clerk.*

26 New Jersey Supreme Court.

In the Matter of the Drainage of the Great Meadows in the Counties of Warren and Sussex.

On exceptions to the assessment made by Amos Hoagland and others, commissioners, Aaron Vanbuskirk, Isaac Cummins, The Crane Iron Company, Robert L. Kennedy, Charles S. Wurtz, and others being objectors.

Depositions of witnesses in the foregoing matter, taken before

Henry S. Harris, supreme court commissioner, at the Clarendon House, in the town of Hackettstown, Warren county, New Jersey, on Thursday, the fourth day of December, A. D. eighteen hundred and seventy-nine, at 12 o'clock noon of said day, in the presence of J. G. Shipman, Esq., counsel for objectors, and Theodore Little, Esq., counsel for the commissioners, pursuant to notice.

Counsel agree that the evidence taken in behalf of the above-named exceptants shall be used in the argument in behalf of any and all persons who have filed exceptions to the assessment, so far as the same shall be applicable to said exceptions.

27 ROBERT L. GARRISON, a witness for the objectors, being duly sworn according to law, on his oath saith:

I reside in Hackettstown, and have for a little over three and half years; before, I resided at Vienna, in Warren county; I lived there fourteen years, I think; that is, I should think, within a mile of the Great Meadows; before that I resided at the Great Meadows; I am well acquainted with the Great Meadow lands.

Being shown map, marked "Exhibit A," on the part of Isaac Cummins, one of the objectors, is asked:

Q. Who made that map, and for whom was it made?

A. I made it for Isaac Cummins.

Q. Please to state whose lands are described on that map.

A. Polhemus Cummins part, Isaac Cummins part, Silas Cummins a part.

Q. Describe the red line running east and west on the map.

A. It is a large ditch and the northerly line of Polhemus Cummins and Isaac Cummins and Silas Cummins.

Q. Describe the figures on the northerly side of that red line, and explain the meaning of them fully.

A. The figures, one foot and ninety-seven hundredths, at the junction of the new and old ditch, indicate the height of the ground at that point above the surface of the ground at the Pequest river; the figures thirty-nine one-hundredths show the surface at that point below high-water mark; the figures at the northwest corner of Isaac Cummins' land show that point to be three feet and seven-tenths above the surface at the Pequest creek at the mouth of the new ditch; the one, thirty-four hundredths, at the northwest corner of Isaac Cummins' land, shows the surface height at that point above high-water mark of the Pequest creek at the mouth of the new ditch;

28 the figures four seventy-five one-hundredths feet shows the height of the surface above the surface of Pequest creek, at the mouth of the ditch; the figures two thirty-nine hundredths feet, shows the height of the surface at that point above high-water mark at the mouth of the ditch at Pequest creek; the figures five sixty-five one-hundredths feet, at the northwest corner of Silas Cummins' land, is the highest of the surface at that point above the surface at the mouth of the new ditch at Pequest creek; the figures three feet twenty-nine one-hundredths, at the northwest corner of Silas Cummins' land, shows that point to be

that height above high-water mark at the mouth of the new ditch at Pequest creek.

Q. What designates the Pequest creek on the map?

A. The blue line marked Pequest.

Q. Are all those figures that you have given on the side of the red line nearest to the Pequest?

A. They are.

Q. How many acres are designated on the map as being assessed against Isaac Cummins?

A. One hundred and five acres.

Q. Do you know these lands?

A. Yes, sir.

Q. How long have you known them?

A. Well, twenty years at least.

Q. Please to state whether the drainage of the Pequest, as made by the commissioners, has had any influence on those lands.

Objected to by Mr. Little, as entirely irrelevant.

A. In my opinion, it has not.

Q. Please to state your reasons for that opinion fully.

Objected to by Mr. Little, on same ground.

A. This lands lies sufficiently high above Pequest to be drained without any reference to Pequest whatever, and had already been drained and a large portion of it under cultivation for a long time before the commencement of the drainage, and for the reason that the overflow from Pequest could not reach it because at the lowest point the land lies two feet and thirty-nine one-hundredths above high-water mark at Pequest at the mouth of the new ditch.

29 Q. During these twenty years have you lived near these lands, so that you know them?

A. I have; yes, sir.

Q. Please to state how many acres are designated on the map as being assessed against Polhemus Cummins.

A. Two hundred and forty-five acres.

Q. Are you acquainted with those lands?

A. Yes, with the greater portion of them.

Q. How long have you known them, sir?

A. Some twenty years.

Q. State whether, in your judgment, these lands are in any wise affected or benefited by the drainage made by these commissioners?

A. There is a portion of these lands that, in my judgment, would be benefited.

Q. Can you state what proportion?

A. I cannot, sir?

Q. How is it with the other part?

A. There is a part of it, in my judgment, that is not benefited, for the reason that the place is so high above the overflow of the Pequest that the drainage would have no effect upon it; it can be sufficiently drained without, and has been under cultivation for

some years; I should think for likely ten years. I can't tell how much has been under cultivation.

Q. Now, how many acres are designated on the map as having been assessed against Silas Cummins?

A. Fifty-nine acres.

Q. Are you well acquainted with these lands; and, if so, how long have you been acquainted with them?

A. I have been acquainted with them for at least twenty years.

Q. Are those lands in any wise benefited by this drainage, as carried out by the commissioners; and, if they are not, state why they are not and cannot be?

Objected to, as irrelevant, by Mr. Little.

A. In my opinion they are not, because at the lowest point they are three and twenty-nine one-hundredths feet above any overflow of Pequest creek.

30 Q. Have those lands been under cultivation; and, if so, for how long a time?

Objected to by Mr. Little, on same ground.

A. A portion of them has been under cultivation; I can't tell for how long.

Witness being shown map marked "Exhibit B," on the part of the Crane Iron Company, is asked:

Q. Who made that map, Exhibit B?

A. I did; I made it.

Q. Are you well acquainted with the lands of the Crane Iron Company on which the assessment has been made?

A. I am; I have known them upwards of forty years; I have lived within one mile of them nearly all the early part of my life, up to 1862, when I moved to Vienna.

Q. On the map, and in the recent assessment made by the commissioners, the lands assessed to said company are designated as Nos. 34 and 35—number 34 as containing twenty-seven acres, and number 35 as containing thirty-eight acres and forty-seven hundredths of an acre.

Q. Will you please to state if the location of the said lots are correctly located on said map?

A. They are.

Q. State whether lot No. 35, in your judgment, can be or has been in any wise benefited by the system of drainage as made by the commissioners, or the value of the land in any wise increased; and, if not, why not? Give your reasons fully.

Objected to by Mr. Little, as irrelevant.

A. In my opinion lot No. 35 is not benefited by the drainage, because it lies above any overflow of the Pequest creek, with sufficient fall to drain it without any regard to the Pequest creek; the fall across lot 35, according to my recollection, is from four to six feet.

Q. State whether the map shows how far the southeast corner of lot 35 is above high water mark in Pequest swamp.

A. It does show three feet and thirty-six hundredths, and that is correct.

31 Q. How is that lot number 35 in reference to being tilled?

A. A portion of it has been tilled.

Q. For how long a time?

A. Perhaps twenty-five years.

Q. Has anything affected it at any time on the northeast side, next to the mountain; if so, what, and how has it affected it, and how does that water run off?

A. There is a mountain brook enters it at times at the northeast corner, and has a tendency to make it very wet; this brook has another course usually, and does not affect lot number 35 unless thrown out of its usual course.

Q. Suppose it should be thrown on there, does this drainage have any affect to carry that off, or is the fall sufficient to carry it off itself?

A. I think the fall is sufficient to carry it off.

Q. State where the exterior line of drainage on the map B is, and how you ascertained it.

A. It is the red line on the map on the north side of number 35, and so marked on the map; we took the line between the upland and the meadows as the exterior line when we surveyed.

Q. Who are we?

A. James Boyd, one of the commissioners, and myself, chainmen; I don't know who it was ran the line.

Q. Did you run the line for the commissioners there?

A. I did.

Q. State the nature of the country immediately above that exterior line.

A. Most of the land above is very hilly and steep.

Q. Called what?

A. I never heard it called any name.

Q. Where is the high water line as designated on map B?

A. It's a crooked blue line running through lots number 34 and 36 on the map, and so marked in blue ink.

Q. State whether lot 34 can be benefited by the drainage.

Objected to by Mr. Little, on same ground.

32 A. Yes, sir; most of it can, in my opinion.

Q. How?

A. By lowering the water in Pequest; most of that lot was affected by the overflow of Pequest.

Q. State whether it can be benefited without the owners make ditches through it over the land of other persons to the Pequest creek.

Objected to by Mr. Little, on the same ground.

A. I think not.

Q. How long would the ditches have to be made to reach the Pequest?

A. I should judge two hundred and twenty to twenty-five rods.

Q. Over how many tracts of land belonging to other persons would they have to extend the ditch?

A. Four at least.

Q. Are those tracts, with the owners' names, designated on the map?

A. Yes, sir; through S. T. Scranton, J. G. Shipman, Dr. William I. Roe, Sarah Freeland—I spell it on the map Vreeland.

Q. State how the boundaries between lots 34 and 35 are designated on the map B.

A. By a black line and dotted.

Q. Would the construction of the ditch you have named be attended with a heavy expense, or not, to the owners?

Objected to, by Mr. Little.

A. It would cost quite a bit of money.

Q. Is the Pequest creek designated on the map B; and, if so, by what; and what is the distance from lot 35 to the Pequest creek; also from lot 34?

A. It is on map and designated by a broad, crooked blue line, and marked "Pequest," and distant from lot number 35 about two hundred and seventy rods, and from lot 34 about two hundred and twenty.

Witness being shown map Exhibit C, on the part of Charles Stuart Wurts, and Robert Lenox Kennedy, devisees of Mary V. Wurts, is asked:

33 Q. Who made that map?

A. I did.

Q. Does that map give a general outline of the boundaries of the land formerly belonging to Mrs. Mary V. Wurts?

A. Yes, sir; it does.

Q. Does it also show the exterior line run by order of the commissioners around the land assessed by the commissioners to Mrs. Wurts, and does it also show the land subject to overflow by Pequest river, and the high water line from Pequest river both east and west of the land previously belonging to Mrs. Wurts, and the general course of the Pequest river? Explain from the map.

A. It does. The exterior line is indicated by a red line on the map, and marked "exterior line of drainage survey." It shows the land subject to overflow fully on the west side of the swamp, and only partially on the south side of the swamp; the high water line on the west side of the swamp is indicated on the map by a crooked black line, marked "high water line;" on the east side of the high water line is shown partially by a crooked blue line, marked "high water line;" the boundaries of Mrs. Wurts' land are shown by a double line, red and blue; the map shows the general course of the Pequest river by a broad blue line, marked "Pequest river."

Examination adjourned until Friday, December 5, at 9 o'clock a. m.

Parties met Friday, December 5, 1879, pursuant to adjournment.

Q. State whether the map shows how far the southeast corner of lot 35 is above high water mark in Pequest swamp.

A. It does show three feet and thirty-six hundredths, and that is correct.

31 Q. How is that lot number 35 in reference to being tilled?

A. A portion of it has been tilled.

Q. For how long a time?

A. Perhaps twenty-five years.

Q. Has anything affected it at any time on the northeast side, next to the mountain; if so, what, and how has it affected it, and how does that water run off?

A. There is a mountain brook enters it at times at the northeast corner, and has a tendency to make it very wet; this brook has another course usually, and does not affect lot number 35 unless thrown out of its usual course.

Q. Suppose it should be thrown on there, does this drainage have any affect to carry that off, or is the fall sufficient to carry it off itself?

A. I think the fall is sufficient to carry it off.

Q. State where the exterior line of drainage on the map B is, and how you ascertained it.

A. It is the red line on the map on the north side of number 35, and so marked on the map; we took the line between the upland and the meadows as the exterior line when we surveyed.

Q. Who are we?

A. James Boyd, one of the commissioners, and myself, chainmen; I don't know who it was ran the line.

Q. Did you run the line for the commissioners there?

A. I did.

Q. State the nature of the country immediately above that exterior line.

A. Most of the land above is very hilly and steep.

Q. Called what?

A. I never heard it called any name.

Q. Where is the high water line as designated on map B?

A. It's a crooked blue line running through lots number 34 and 36 on the map, and so marked in blue ink.

Q. State whether lot 34 can be benefited by the drainage.

Objected to by Mr. Little, on same ground.

32 A. Yes, sir; most of it can, in my opinion.

Q. How?

A. By lowering the water in Pequest; most of that lot was affected by the overflow of Pequest.

Q. State whether it can be benefited without the owners make ditches through it over the land of other persons to the Pequest creek.

Objected to by Mr. Little, on the same ground.

A. I think not.

Q. How long would the ditches have to be made to reach the Pequest?

A. I should judge two hundred and twenty to twenty-five rods.

Q. Over how many tracts of land belonging to other persons would they have to extend the ditch?

A. Four at least.

Q. Are those tracts, with the owners' names, designated on the map?

A. Yes, sir; through S. T. Scranton, J. G. Shipman, Dr. William I. Roe, Sarah Freeland—I spell it on the map Vreeland.

Q. State how the boundaries between lots 34 and 35 are designated on the map B.

A. By a black line and dotted.

Q. Would the construction of the ditch you have named be attended with a heavy expense, or not, to the owners?

Objected to, by Mr. Little.

A. It would cost quite a bit of money.

Q. Is the Pequest creek designated on the map B; and, if so, by what; and what is the distance from lot 35 to the Pequest creek; also from lot 34?

A. It is on map and designated by a broad, crooked blue line, and marked "Pequest," and distant from lot number 35 about two hundred and seventy rods, and from lot 34 about two hundred and twenty.

Witness being shown map Exhibit C, on the part of Charles Stuart Wurts, and Robert Lenox Kennedy, devisees of Mary V. Wurts, is asked:

33 Q. Who made that map?

A. I did.

Q. Does that map give a general outline of the boundaries of the land formerly belonging to Mrs. Mary V. Wurts?

A. Yes, sir; it does.

Q. Does it also show the exterior line run by order of the commissioners around the land assessed by the commissioners to Mrs. Wurts, and does it also show the land subject to overflow by Pequest river, and the high water line from Pequest river both east and west of the land previously belonging to Mrs. Wurts, and the general course of the Pequest river? Explain from the map.

A. It does. The exterior line is indicated by a red line on the map, and marked "exterior line of drainage survey." It shows the land subject to overflow fully on the west side of the swamp, and only partially on the south side of the swamp; the high water line on the west side of the swamp is indicated on the map by a crooked black line, marked "high water line;" on the east side of the high water line is shown partially by a crooked blue line, marked "high water line;" the boundaries of Mrs. Wurts' land are shown by a double line, red and blue; the map shows the general course of the Pequest river by a broad blue line, marked "Pequest river."

Examination adjourned until Friday, December 5, at 9 o'clock a. m.

Parties met Friday, December 5, 1879, pursuant to adjournment.

By Mr. SHIPMAN:

Q. Please to take the land on the west side of the Pequest river and state how much of it lies beyond the high water mark of the Pequest and within the exterior boundary of the commissioners' survey.

A. One hundred and four acres.

34 Q. Can that land—one hundred and four acres—ever be touched or affected in any wise by any overflow or backwater from the Pequest river?

Objected to by Mr. Little, as irrelevant.

A. It cannot.

Q. Can the drainage of the Pequest river in any wise benefit that one hundred and four acres. If it cannot, please give your reasons why it cannot; state them in full.

Same objection.

A. In my opinion it cannot affect it, because that land can be sufficiently dried and drained without any reference to the deepening of the Pequest river.

Q. State whether in your judgment these hundred and four acres should have been included in the plan of drainage or not.

Same objection.

A. In my judgment they should not.

Q. Have you observed for years past these hundred and four acres in reference to their dryness. If you have, please state what you have observed about them in reference to their dryness.

A. I have known that tract of land for forty years. Dr. Paul in 1847 or '8 commenced a system of drainage with that tract of land, and had it sufficiently dry for cultivation for any crops to which it was adapted.

Q. State whether the present drainage of the Pequest creek has made any difference as to the dryness of these one hundred and four acres from what they have been for the last twenty-five or six years.

A. I have not been on that land for the last three years; the dredging at that time had not passed those lands; up to that time I could discover no difference.

Q. Take the east side of the Pequest and state how many acres of this land, late of Mrs. Wurts, that has been assessed by the commissioners, lie outside of the high-water line of the overflow, as exhibited on this map, Exhibit C on the part of the objectors, Dr. Wurts and Mr. Kennedy.

A. Three hundred and sixteen acres.

35 Q. State whether these three hundred and sixteen acres can be affected by the overflow or backwater from Pequest river.

A. No, sir; they cannot.

Q. Can the drainage of the Pequest river benefit these lands—I mean these 316 acres?

Objected to by Mr. Little, as leading and irrelevant.

A. In my opinion, it cannot.

Q. Why not?

A. Because these lands lay so far above Pequest river that the overflow cannot injure them, and the drainage cannot benefit them.

Q. Ought these lands, in your judgment, to have been included in the survey of the commissioners, and subjected to the assessment for benefits?

Same objection, by Mr. Little.

A. No, sir; in my judgment, they should not.

Q. What fall is sufficient for drainage?

A. Professor Cook tells us one foot to the mile is sufficient in a stream the size of Pequest river. In ordinary ditching for drainage it would require, I should think, about four feet, and more than that would be better.

Q. What is the fall on the east side of the three hundred and sixteen acres?

A. I can give nothing more than my recollection. I can't give it exactly. I can get my book and tell you.

Q. Well, state your recollection about it.

A. I think the general fall would be from eight to ten feet to a mile.

Q. How is it on the one hundred and four acres?

A. On this one hundred and four acres, aboves the high-water line, the fall would exceed ten feet to the mile. From the high-water line to the Pequest river it would not exceed five feet to the mile.

Q. What's the distance from the high-water line on the east side of the creek to the creek?

A. Thirty-two chains.

Q. Look at that map, "Exhibit D" on the part of Ephraim Simanton, and state who made that map.

A. I made it.

Q. What does it represent?

36 A. It represents the Pequest river, lands of Ephraim Simanton, and others.

Q. Does it represent the beginning corner of the line of survey as adopted by the board of managers?

A. No, sir; not exactly; it represents the line on the west side of the Great Meadows adopted by the board of managers, and also the exterior line of drainage adopted by the commissioners, along the Pequest river, and what is known as the Bacon Run swamp, lying on the westerly side of the steam-mill bridge, known as Larrison's bridge; the red lines show the exterior line of drainage as made by the present commissioners of drainage, Messrs. Hoagland, Boyd, and Johnson.

Q. Do you know where the beginning corner of the boundaries of the tract known as the Great Meadows is, as adopted; I mean by the board of managers of the geological survey?

A. It is in the edge of the meadow, in front of the Danville Presbyterian Church.

Q. Have you any map in your possession that would show that?

A. Yes, sir.

Witness being shown map marked "Exhibit E," on the part of the objectors, is asked:

Q. Who made that map?

A. It was made under my direction, and is a true copy of the original map, showing all the lands of assessed by the commissioners of drainage, and the exterior lines thereof; also the location of the Pequest creek, and also the Bacon Run swamp.

Q. Does the map show the beginning corner of the survey of the Great Meadows, as adopted by the board of managers; if so, will you state its location on the map?

A. Point "A" on the map is the beginning point.

Q. According to that beginning point, does the land of Rev.
27 Mr. Simanton, assessed by the commissioners, lie within the geological survey, as adopted by the board of managers.

Objected to by Mr. Little on same ground.

A. No, sir; it does not; their survey did not cover any lands below or east of the Larrison bridge, as I understand it.

Q. Mr. Garrison, what has been your business for many years past?

A. Land surveying and engineering.

Q. For how many years?

A. Thirty years.

Q. Have you owned a farm, also?

A. I have; yes, sir.

Q. How long?

A. About nineteen or twenty years.

Q. Have you attended to the cultivation of it yourself?

A. Well, I rented it out; I lived on it part of the time, and part of the time rented it out.

Q. Have you had an intimate knowledge of the Pequest and the lands lying about it, both uplands and meadow?

A. Yes, sir.

Q. Have you examined the Pequest creek in any of its parts since the commissioners have ceased working upon it? If you have, please to state what portions of it you have examined, and how recently.

A. I was along a portion of it last Tuesday a week ago; I followed the bank, commencing about three-quarters of a mile above the Larrison bridge, down to the Vienna bridge, or nearly so.

Q. State what you observed in reference to the banks of the creek, as to how they were left in the drainage, whether perpendicular or sloping.

Objected to by Mr. Little, as irrelevant.

A. I know the condition, for I was along the creek—this portion

of the creek—at the time the work was done; they were left somewhat sloping; since that I see they have caved in quite a considerable, and I saw two or three sand-bars forming in the creek.

38 Q. How much had these sand-bars affected the width of the creek at the places you observed?

A. Of course they had narrowed the channel at the base and widened it at the top.

Q. Can you give any accurate estimate as to how much it was narrowed at the base in the places you observed?

A. I cannot tell how much; I took no measurements.

Q. In your judgment, Mr. Garrison, how long will it take at the rate which you saw the other day the base was filling up seriously to obstruct the running of the water in the Pequest?

Objected to by Mr. Little.

A. I can't tell how long.

Q. Mr. Garrison, did you own any land assessed by the commissioners?

A. Yes, sir; seventy acres.

Q How much was there in the farm to which these seventy acres were attached?

A. Two hundred and four acres.

Q. State whether the value was increased any by the drainage.

Objected to by Mr. Little on the same ground.

A I don't think it was.

Q. Have you recently sold these lands?

Objected to by Mr. Little, as irrelevant.

A. I have.

Q. Did you get any more for it than you would have got if drainage had not been made?

Same objection by Mr. Little.

A. I don't suppose I did.

And being cross-examined by Mr. LITTLE, said:

Q. When did you sell your farm?

A. The contract for it was made a year ago; the deed passed November 18th last, I think.

Q. To whom did you sell it, and for what price?

A. I sold it to Charles Scranton and Mr. A. W. Humphreys; I am to have eleven thousand dollars.

39 Q. How old are you, Mr. Garrison?

A. I am fifty-six; I have followed surveying most of my life, thirty years and upwards; my residence has been near the Great Meadows; I have followed surveying all over the State, almost; I have been for many years well acquainted with this tract of land known as the Great Meadows.

Q. Has there been any difficulty in following the line of the Great Meadows between the wet and the dry land?

A. Not as a general thing; generally no difficulty about it.

Q. Has that tract of land, or not, been subject to overflow ever since you can remember?

A. Certain portions of it have, large portions.

Q. What proportion of what is known as the Great Meadows has been subject to overflow?

A. I cannot tell the proportion.

Q. One-quarter, one-half, three-fifths—can't you give us any definite idea?

A. I think probably one-half has been subject to this overflow.

Q. How long did that overflow generally continue?

A. I could not say as to the length of time; sometimes quite a long time, other times not so long.

Q. In your judgment, was no portion of this land known as the Great Meadows injured, except that part that was subject to overflow?

A. If the water laid a long time it injured the land further back somewhat.

Q. How would it injure those lands if they were not overflowed by it?

A. By soakage.

Q. What is the character of the soil?

A. Generally muck, black muck.

Q. Is it a kind of soil that holds water for any length of time?

A. Well, I can't say as to how long; there is different kinds of muck there; some dries out very quickly, other portions will hold the water.

40 Q. What is the character of the land outside the boundary line between the wet and dry line?

A. Some places loam; some places sand; some places gravel; some places it is rock.

Q. Is it springy?

A. There are springs on the shores of course.

Q. What would be the effect on the lands where the springs were of high water in the creek, even when the land itself was not overflowed?

A. Well, if these springs were allowed to spread it would make it wet, of course, and injure the land.

Q. Would, or not, then the high water in the river cause the water from the springs to spread, if it saturated the land some distance from the shore?

A. It would be owing entirely to the height of the land above the backwater.

Q. Did you ever have occasion to examine the land for the purpose of ascertaining how far from the bank of the stream it was affected in time of high water, by soakage, and obstruction of the water, unless when the land itself was not overflowed?

A. No, sir, I never did.

Q. You can't give us any information, then, on that point?

A. I cannot.

Q. You were at this stream, you say, two or three weeks ago?

A. Yes, sir; the same day Mr. Hunt, Mr. Shipman and others were there?

Q. At whose request did you go there, and for what purpose?

A. I went there with Mr. Hunt, from this place; went to Danville first; I didn't know the purpose when I went there at all; went there and took dinner, and then went to the creek; I suppose that was the purpose they wanted me there for, of course; I took dinner with Mr. Hunt, Mr. Shipman, sheriff of Warren county, Dr. Wurts, and I don't know who else; I suppose the purpose was viewing the creek; that was what we did.

Q. How long were you engaged in that view?

41 A. I can't tell; long enough to walk two miles and a half; perhaps about an hour.

Q. You state that you were along the banks when the work was being done by the commissioners, and that the banks were left somewhat sloping; in your opinion, was that right, or not?

A. The banks should be sloping, of course.

Q. What is the character of the soil at that particular part that you examined that day?

A. Almost all kinds—much clay, gravel and some loam.

Q. Did this caving of the bank that you have spoken of extend the whole distance that you have spoken of.

A. I think the greater portion of it.

Q. If the banks had been left sloping, as you stated, what caused the caving, in your opinion?

A. It was caused by the action of the frost, I suppose, generally.

Q. To what extent had that caving of the bank narrowed the channel at the base?

A. I think, probably, from five to ten feet, it was *was* different in different places.

Q. What was the width of the channel, as left by the commissioners, at the base?

A. I nevered measured it; I understood it to be thirty feet.

Latter clause of answer objected to, as hearsay, by Mr. Shipman.

Q. Was the channel at the base then, according to your observation, narrowed from five to ten feet for that whole distance that you examined on the 25th of November?

A. I think nearly so.

Q. What was the depth of this earth that you say had caved in and narrowed the channel base?

A. I couldn't tell you the depth of it.

Q. Did you examine it to see what depth it was?

A. I did not.

42 Q. What led you, then, to think the channel as left by the commissioners was narrowed by it from five to ten feet?

A. Nothing more than my observation as I passed along.

Q. What did you see that indicated it?

A. The earth that had slid in from the banks indicated that.

Q. Was it covered with water?

A. Some of it was, and some of it was not; the water was very low.

Q. How was the current?

A. I didn't notice that in particular.

Q. What was the depth of water in the stream?

A. I couldn't tell you that.

Q. Was it unusually low or not?

A. It was; I don't think I have ever known it to be any lower.

Q. Did you ever know it to be so low as it was that day?

A. I don't recollect that it ever was so low.

Q. How near did the water cover the base of the channel that day?

A. I saw it measured in one place; I think twenty-five feet at the surface of the water.

Q. Was the water of uniform depth for that twenty-five feet?

A. No, sir.

Q. Did you measure it?

A. I did not; you could see that it was not, very plainly.

Q. What, in your opinion, was the average depth?

A. I think, probably, from eight to ten inches.

Q. Mr. Garrison, you fixed the beginning point of what you called the geological survey as adopted by the board of managers, where did you get that point from?

A. From their printed report—Professor Cook's.

Q. Where do you find that?

A. I have one, and Mr. Shipman has one here.

Q. Have you ever followed the line of that survey around the Great Meadows from the beginning point? 43

A. I have; a great portion of it.

Q. When, and for what purpose?

A. I think in the summer of seventy-four, for the purpose of making a map to ascertain the number of acres of each land holder lying inside of that survey.

Q. At whose request was that survey made by you?

A. At the request of these commissioners of drainage.

Q. What was your guide in making your survey at that time?

A. Generally the line at the junction of the meadow land and upland. At some places it was very difficult to tell where that was.

Q. So far as you could, did you endeavor to ascertain, and were you guided by that line in making that survey?

A. Yes, sir.

Q. Could you have made a survey according to that report with any certainty in any other way?

A. I think not, sir.

Q. In the notice of drainage published over the name of William M. Force, as secretary, on the 13th of September, A. D. 1872, purporting to be issued by the board of managers of the geological survey, I find this language: "The boundary of said tract is plainly marked upon the surface at the meeting of the flat and boggy

meadow or swamp with the upland, and may be traced." Was that, or not, your guide in making your survey?

A. So far as I could discover it. The commissioners are the proper persons to tell about that; it was done under their directions.

Q. Which of the commissioners was with you in making that survey?

A. Judge Boyd, most of the time, and Mr. Hoagland some part of the time.

Q. Was there any difference of opinion between the commissioners and yourself as to the proper location of that line that you can recall?

44 Objected to, as irrelevant, by Mr. Shipman.

A. I think there was in some few cases, not many.

X. Well, did you finally run the line by agreement between you, or not?

(Objected to, on same ground, by Mr. Shipman.

A. I think so, in some instances.

Q. Can you designate those points in the line where those differences occurred?

Objected to, as irrelevant and no cross-examination, by Mr. Shipman.

A. I can some of them, sir.

Q. Where were they?

Same objection by Mr. Shipman.

A. One instance was where they ran outside of the boundary, as I understood it, into the township of Frelinghuysen, and took in a large tract that laid outside of the bounds of the geological survey entirely.

Q. Well, any others?

A. Yes, sir; I differed with them as to surveying the land below the Larrison bridge. I don't recall any others to my mind just now. There were some little differences.

Q. This map, which is marked "E," you say is a copy of the original map; what do you refer to as the original map?

A. The first map that was made for the commissioners, to be filed.

Q. What portion of the lands included in the exterior line indicated on the map has been most benefited by the drainage?

A. The lands along the Pequest river and those subject to the overflow of the stream.

Q. Were you one of the applicants for the appointment of these commissioners of drainage?

Objected to by Mr. Shipman.

A. I think I was; I signed a petition for something.

Q. Has or not the necessity for the drainage of these meadows been a matter of consideration as long as you can remember?

45 Objected to by Mr. Shipman, as irrelevant and no cross-examination.

A. Yes, and longer, too.

Q. What, according to your understanding, has been the boundary line of the tract of land known as the Great Meadows?

Same objection by Mr. Shipman.

A. The line separates the upland from the meadows.

Q. When was this line, marked "High-water line," in blue ink, placed upon the map, Exhibit B?

A. In August, seventy-six.

Q. Was it placed there by actual levelling made upon the ground or by the eye?

A. By actual levelling made upon the ground. These levels were taken from high-water mark prior to the time when Dr. Paul cleaned out the Pequest creek. All my other levels are taken from the same height. That mark is higher than it has ever been known since.

Q. What was the character of the land along the stream before the drainage by the commissioners, as compared with that lying between the stream and that known as the exterior line of survey, as to level; was it higher or lower?

A. There are points between the bank of the stream and the exterior line which are lower than the bank of the stream.

Q. Are there or not portions of the land higher?

A. Yes, there are portions higher, too.

Q. Do you know whether or not the surface of the ground at the point at which the new ditch empties into the Pequest is higher or lower than the bank of the stream northeasterly from the mouth of the ditch?

A. I can't say as to that.

Q. Did you take the level of Isaac Cummins' land at any other point except the one indicated on this map, Exhibit A?

A. I took it at the northwest corner of his tract—at the northeast corner. I also took one near the exterior line. These three points are marked on the map.

46 Q. How near was the level taken to the exterior line, and on which side of it?

A. I think it was very near the line; it was intended to be at the line.

Q. How many levels did you take upon the land of Silas Cummins?

A. Only one—at the northwest corner, which is the northeast corner of Isaac Cummins' land.

Q. How many did you take upon the land of Mrs. Wurts, and at what points?

A. On the east side of the meadows I commenced, at high-water mark, and levelled out to a blue line, marked on Exhibit C as "high-water mark;" on the west side of the meadows I commenced at high-water mark at the Pequest, and levelled out to the blank line marked

"high-water line," on same map, and followed that line by taking a level at every chain the whole length of the line.

Q. Have you marked upon that map the heighth of the high-water line above the surface at the mouth of the ditch?

A. No, sir; it is not marked.

And being re-examined by Mr. SHIPMAN, said:

Q. Whereabouts, in reference to the beginning point and the line of the geological survey, does the land of the Rev. Mr. Simanton lie?

A. It lies easterly from that line.

Q. And how far distant from the exterior line of the geographical survey?

Objected to by Mr. Little, as irrelevant.

A. The nearest point to the land assessed to the Rev. Mr. Simanton is about half a mile.

Q. Does that map, "Exhibit D," show the location of the land, or any portion of it, of Aaron Van Buskirk, assessed by the commissioners to him?

A. Yes, sir, it shows it; it is marked "S. T. Scranton," on the map.

Q. How does it lie, as compared with Mr. Simanton's, on the map?

47 A. It lies adjoining one track of Mr. Simanton; it adjoins the nearest track assessed to Mr. Simanton; it adjoins the Pequest, and is about half a mile below Larrison's bridge.

Q. How many acres are assessed there of Mr. Scranton's land, now owned by Mr. Van Buskirk?

A. Twenty-four acres and sixty-six one-hundredths.

Q. Does that land also lie without the exterior boundary of the geological survey?

A. Yes, sir; as I understand it.

Q. That geological survey, as I understand from your testimony, does not go below the point in the meadow opposite the Danville Church nor below the Larrison bridge; am I correct about that?

A. That is my understanding of it, sir.

Q. So that all the land, then, lying below the Larrison bridge is outside of the exterior line of the geological survey, is it?

A. Yes.

Q. You say, on your cross-examination, there was some difference of opinion between you and the commissioners of drainage in reference to the exterior line; was that difference of opinion anything more than the difference as to the boundary of the exterior line where the geological survey exactly ran, or what was it?

A. It was as to where the geological survey ran, as far as I recollect at this time.

Q. Do you recollect how long you were running that exterior line?

A. I can't tell you how long.

Q. Well, about?

A. Perhaps a couple of weeks—in that neighborhood; that about

time, I should think, it would take to do it—that is, to run all around it, what I surveyed.

Q. Which of the commissioners was with you, if either, while you did it, and how long was either one or all with you?

A. Judge Boyd was with me most of the time, Mr. Hoagland part of the time.

48 Q. Can you tell how many days each of them was with you? State as nearly as you can.

A. I can't tell anything about it; one or the other was with me all the time; this was in seventy-four, I know; we commenced the 22d day of May, 1874.

Recross-examined by Mr. LITTLE:

Q. The difference between you and the commissioners, as to the location of the exterior line, arose from a different construction which you placed upon the language of what you called the geographical report; was that so?

A. No, I think not entirely; the difference was there were certain swamp lands along the Bear creek which they decided to take in their survey; Bear creek is a branch of Pequest above here; those are the Frelinghuysen lands.

Q. As to the matter of difference between you and the commissioners, as to the location of the exterior line below the Larrison bridge, did that difference, or not, arise as to the construction you each put upon the language of the geological report?

A. My impression is that it did.

Q. If that exterior line, below Larrison's bridge and between that bridge and the beginning corner of the survey, followed the line where the flat and boggy meadows or swamp met the upland, would it or not then include Mr. Simanton's land?

Objected to by Mr. Shipman, as not a recross-examination and irrelevant.

A. It would not have been included in the geological survey.

Q. If you had run that exterior line between Larrison's bridge and the beginning corner of the survey, where the meadow and upland meet, would it then, or not, include Mr. Simanton's land?

Same objection by Mr. Shipman.

A. No, sir; there is an entire separation of the uplands and
49 lowlands at Larrison's bridge; the swamps of the Great Meadows are entirely different from the lowlands below Larrison's bridge; there is an entire separation of the Great Meadows at Larrison's bridge.

Q. What marks that separation you speak of at Larrison's bridge?

A. Uplands.

Q. Do you mean to say that the lands below Larrison's bridge have not been subject to overflow from the Pequest?

A. No, sir; I did not say so; I do not mean to say so.

Q. Do you mean to say, or to be understood, that they have not been benefited by the drainage?

Same objection by Mr. Shipman.

A. No; I did not say so.
Q. Have they not been benefited?

Same objection.

A. I think they have.
Q. In what way?

Objected to by Mr. Shipman.

A. Why, by lowering the stream.
Q. How did that benefit the lands?

Objected to by Mr. Shipman.

A. By drying them.
Q. Does that apply to all the lands along the stream between Larrison's bridge and the beginning corner of the survey?

Same objection by Mr. Shipman.

A. Do you mean the geological survey?

Mr. LITTLE: The beginning corner of the geological survey.

A. Yes, sir; it applies to all.
Q. Is there or not, between those two points, a natural boundary line between the wet and dry ground?
A. There is a natural boundary; undoubtedly there is.
Q. Is there or not a well defined boundary line between the wet and dry ground around this whole tract which you surveyed for the commissioners; I understood you to say so at the commencement, but there may be some doubt about it?
50 A. There is a piece of ground below the bridge that was subject to overflow at the time of high freshet, as shown by the exterior line on this map, Exhibit D.
Q. Was there, or not, such a defined boundary line between the wet and dry ground at the time of your survey for the commissioners on both sides of the stream between Larrison and what is known as first bench?
A. There is pieces of meadow lying on both sides of this creek detached the whole way down, or nearly so; there was a well defined boundary to these pieces.

Second re-examination by Mr. SHIPMAN:

Q. Mr. Little has asked you if there is not a well defined boundary between the low and upland, extending from the beginning of the geological survey to Larrison's bridge, or from Larrison's bridge to the beginning of the geological survey; now just tell us where the beginning corner of the geological survey is in its relations to Larrison's bridge; is it north, south, east, or west of Larrison's bridge; and how far distant is it from Larrison's bridge?
A. The beginning point of the geological survey is a southwesterly course from Larrison's bridge; a little over a quarter of a mile distant, I think.

Q. Is the beginning point of the geological survey up or down the Pequest from Larrison's bridge, or in other words, is it above or below the bridge?

A. It is above the bridge.

Q. Where does the geological survey cross the Pequest on the south, if you know?

A. I can give you my opinion; that is all; my opinion is at Larrison's bridge.

Q. The lines of the geological survey can easily be traced, can they not?

A. I think so; yes, sir.

Q. And did you trace them and satisfy yourself, as a surveyor, that it did cross at the Larrison bridge, as you stated?

51 A. I did.

Q. Has it not always been well understood, Mr. Garrison, that what was considered the Great Meadows ended at the Larrison bridge?

Objected to, as mere opinion and rumor.

A. I have always so understood it.

Q. Has the land below the Larrison bridge been low, marshy, boggy land, or has it been in places—land simply subject to overflow at times of very high water in the Pequest, which ran off rapidly, and the lands cultivated?

A. Part of the lands below the Larrison bridge were low and wet lands—swampy lands. There are other portions that have been subject to overflow that are not swampy lands, but have been cultivated.

Q. Taking the lines of the geological survey as they are given, would it be possible, by them, to reach the lands of either Mr. Simanton, or the lands formerly of Scranton, and now owned by Van Buskirk?

Same objection by Mr. Little.

A. I think not.

Q. Have you examined lately, Mr. Garrison, the land of Mr. Simanton, to see whether it is not now subject to overflow.

A. No, sir; I have not.

Q. You have stated in reply to Mr. Little's question that the boundary between the meadow land and upland, as embraced in the geological survey, is plainly visible; you do not mean to be understood as saying, do you, that all the land embraced within the geological survey is subject to overflow from the Pequest?

A. No, sir; I do not.

Q. To make even the lands lying along either bank of the Pequest river benefited by this drainage, will it, or not, be necessary to make internal ditches through different parts of the land?

A. Yes, sir; it will.

Q. Will that be attended with large or small expense?

52 A. That would be owing to how much ditching you did.

Re-recross-examined by Mr. LITTLE:

Q. Is there any point on the Pequest between the Larrison bridge and the place where the exterior line of the commissioners' survey crosses the stream from the east to the west bank, on lands of Lewis Merrill, where the stream did not overflow in time of high water, on one side or the other, before the drainage?

Objected to by Mr. Shipman.

A. I think not.

Q. Were, or not, the lands which have been assessed to Mr. Simanton, and also those of Mr. Van Buskirk, subject to overflow in times of high water, before the drainage?

Objected to, as irrelevant and no cross-examination by Mr. Shipman.

A. I have seen Mr. Simanton's ground overflown. Mr. Van Buskirk's I have never seen in time of freshet.

R. L. GARRISON.

Sworn and subscribed before me, this 5th day of December, A. D. 1879.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

JOSHUA HUNT, a witness produced on the part of the Crane Iron Company, being duly sworn, said:

I live in Catasauqua, Pennsylvania; I am superintendent of the Crane Iron Company's works.

Witness being shown map "Exhibit B," on the part of the Crane Iron Company, is asked:

53 Q. Does that map contain a correct description of the two lots of land which are assessed by the commissioners of drainage, the same being styled lots number 34 and 35 in the assessment of said commissioners?

A. I suppose so, as near as I know.

Q. State whether the lot No. 35 designated thereon will be benefited by the drainage of the Great Meadows.

Objected to, by Mr. Little.

A. No, sir; I don't think it will.

Q. State fully the reasons why it will not be benefited by it.

A. Well, it is above high-water mark several feet, and will drain itself; that's about all there is of it.

Q. If there should be water on it, could you reach the Pequest with it; and, if not, why not?

A. Well, no, sir; we couldn't reach the Pequest, other people's land intervening between ours and the Pequest.

Q. State whether, in your judgment, the lot No. 34 has been benefited by the drainage, or not.

Objected to by Mr. Little.

A. No, sir; I don't think it has.

Q. State whether it is practicable or possible to drain lot 34 so as to be of any practical benefit, unless the company makes ditches through the lot 34, and through the lands of other people, to the Pequest Creek.

A. No, sir; I don't think so.

Q. If the company could get the consent of the land owners lying between lot 34 and the creek, would it, or not, be available to the company to make the drain on account of the expense?

A. No, sir.

Q. Have you seen those lands lately?

A. Yes, sir; I saw them to-day.

Q. Can you say, as far as your observation goes, that these lands assessed have been benefited by the drainage?

Objected to by Mr. Little, on same ground.

A. No, sir; not at all.

Q. Lot No. 34 is assessed by the commissioners at the sum of five hundred and forty dollars, and lot number 35 is assessed the
54 sum of six hundred and ninety-two dollars and forty-six cents; will you please to state what is the fair market value of those lands at this time?

Objected to by Mr. Little, on same ground.

A. I don't know.

Q. Are they worth the sum for which they are assessed, and will they, in your judgment, bring that, or anything near that, in the market to-day?

Objected to by Mr. Little, on same ground.

A. No, sir; I don't think they would bring half the assessment.

Q. Have you examined the Pequest creek lately, or any portion of it, to ascertain how this work of drainage has been done?

A. I was over two miles, I should judge, of it lately—between two and three—from the bridge at Danville, above and below, equal distances.

Q. State how the banks of the creek are, whether perpendicular or sloping.

A. Well, they seem to be caving in, forming a natural slope, filling up the creek.

Q. Could you tell, from observing the part of the creek you visited, whether the commissioners had sloped the banks or left them perpendicular?

A. That would have been pretty hard to tell, but I judge they must have been perpendicular, from the condition of the banks at present.

Q. State what you observed, in reference to the filling up of the creek, along the part you visited.

Objected to by Mr. Little, on same ground.

A. I saw sand bars in the creek; I saw dirt off the banks, where it had slid in.

Q. Much or little, in different places?

A. A good deal some places.

Q. Are you acquainted with the proper mode of excavation—whether it is to slope banks or to leave them perpendicular?

A. In railroading and canalling they generally slope the banks one to one or one and a half to one; if they make the sides
55 perpendicular they make the base wide enough to allow the banks to cave and still have the base wide enough.

Q. Could you give any estimate, founded on actual experience or observation, how soon the Pequest will become obstructed so as to hinder the water from flowing off, if it should continue to fill up as it had been doing when you witnessed it, at the time you have spoken of?

Objected to by Mr. Little, as a mere speculation and irrelevant.

A. I should say it would be pretty well obstructed in four or five years.

Q. When was you there?

A. On the twenty-fifth of last month.

Cross-examined by Mr. Little:

Q. How long a time did you spend in making this examination on the twenty-fifth of November last?

A. An hour or two.

Q. Did you walk immediately upon the bank of the creek?

A. Yes, sir.

Q. Did you, or could you, form any opinion, from what you saw, as to whether the banks had been left perpendicular or sloping?

A. Well, I saw some of the banks, portions of the banks, about plumb, other places where the sod had sloped over into the water, and other places where the land had cracked and evidently gone into the water.

Question repeated.

A. I did form an opinion, based on what I have said—that they had been left perpendicular at that place.

Q. Did that appear to have been so for the whole two miles of which you speak?

A. Yes, sir; that is my judgment from what I saw.

Q. Was the channel, for those whole two miles, of uniform width?

A. No, sir.

56 Q. How much would it differ from being uniform in width?

A. I suppose there was a difference of five feet.

Q. About what was the width of the channel at the widest part?

A. I think I saw it thirty feet wide on small portions of it.

Q. Can you designate, with some particularity, the points where you saw the sand-bars forming?

A. Above the bridge called the Larrison bridge I saw two or three bars at the turn in the stream, and I remember seeing one below.

Q. Was there a sharp curve or not?

A. Yes; pretty sharp.

Q. What was the size of the sand-bar you saw there?

A. I think it was half way across the stream, and above the surface.

Q. Was any one with you at that time; and, if so, who?

A. I think Mr. Chapman was with me, and there were others; Dr. Wurts was there; Mr. Shipman was there; the sheriff of Warren county, I believe, was another one; there was one or two more; I don't remember their names; Mr. George Shipman was there; I don't remember anybody else.

Q. How long have you been superintendent of the Crane Iron Company's property, Mr. Hunt?

A. Since sixty-seven.

Q. Have you had charge of all their property in New Jersey?

A. I have.

Q. You have said that lot No. 34 could not be drained except by cutting ditches through other people's lands lying between it and the Pequest; what is the general character of that lot?

A. It is flat and swampy; it looks like all the rest around there; nothing peculiar about it.

Q. You have said, as I understand you, that lot 35 lies so high above the creek that it cannot be benefited by this drainage,
57 but had sufficient slope naturally to drain itself; am I correct in so understanding it?

A. Yes.

Q. Has the Crane Iron Company, or not, been aware of the proceedings for the drainage of these meadows since they were initiated in eighteen hundred and seventy-two?

Objected to by Mr. Shipman, as irrelevant.

A. I don't know whether they were acquainted with it at first or not.

Q. When did you, as the agent or superintendent of that company, first learn of these proceedings in the matter of drainage?

Objected to by Mr. Shipman, as irrelevant and immaterial.

A. Well, I don't know; I heard it talked of in a casual way; some said that it was going to be done, others that it wasn't; the only official notice was when the previous assessment was made and they wanted money.

Q. That was in the year 1876, sir, was it not?

A. I don't know; it was several years ago.

Q. Have you no means of telling about when that was?

A. No, sir.

Q. Were you not sworn in that case in November, seventy-six?

A. I was sworn; I can't tell when it was.

Q. You say, Mr. Hunt, that before you received that official notice of the assessment you had heard the matter of the drainage spoken of; by whom was it spoken of?

A. I don't know; it was a matter of general talk.

Q. Did you not know that that drainage was being done before the company received the official notice of the assessment?

Objected to by Mr. Shipman, as irrelevant.

A. I did not know it as a lawyer understands it.
Q. Did you know it as you understand it?

Objected to by Mr. Shipman.

58 A. I had it from hearsay.
Q. Did you believe it?

Objected to by Mr. Shipman.

A. Oh, yes, sir; I believed it.
Q. Now, Mr. Hunt, how long before the notice of assessment was received had you been informed that the drainage was going on?

Objected to by Mr. Shipman, as irrelevant and immaterial.

A. I don't know.
Q. State how long, as nearly as you can recollect.
A. I don't remember.
Q. Was it as long as a year?
A. I don't know; I only heard of it when I came down here to the mines for a day, in conversation with Mr. Jenkins, and others would speak of it.
Q. What use was the company making of those lands, lots 34 and 35, at that time?
A. Part of lot No. 35 was cultivated; lot No. 34 was a water lot.
Q. Do you know for what purpose the company had purchased those lots?
A. They came as a part of the Potter farm.
Q. How large a farm was that?
A. I don't know exactly; a hundred and fifty acres is in it, at least; one hundred and ninety-six acres, including the meadow.
Q. The company had owned it some time, had they not?
A. Yes, sir.
Q. Who has occupied it for the last five or six years?
A. It has been rented out to two or three different parties; I don't know their names; William Vreeland has it now.
Q. Was it purchased by the company for its supposed mineral value?
A. Yes, sir.
Q. Mr. Hunt, when you were informed, as you say, that these drainage proceedings were going on, did you, or not, suppose
59 that if they were carried through this farm would be affected by them in some degree, and be liable for some portion of the expenses?
A. I did not think so at first.
Q. When did you first have reason to think so?
A. I couldn't tell you that.

Re-examined by Mr. SHIPMAN:

Q. Did the company contest the first assessment and have it set aside?

A. Yes, sir.

JOSHUA HUNT.

Sworn and subscribed before me, this 4th day of December, A. D. 1879.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

ISAAC CUMMINS, a witness produced on behalf of the objectors, being duly sworn, said:

I reside at a place called Meadville, in the township of Independence, in the county of Warren; I am in my sixty-sixth year; my occupation has been farming, and has been since I have been big enough to work on a farm; I own a farm near Meadville, on the south side of the Pequest creek; it adjoins Dr. Wurts' land; I have owned and lived on that farm some twelve or fifteen years ago; I have lived on this property 35 years, 'twill be, next spring; I am acquainted with these lands of Dr. Wurts, formerly of Mrs. Wurts.

Witness being shown map "Exhibit C," is asked:

Q. By Mr. SHIPMAN: Look at that map, at the point marked "high water," and tell us whether the 316 acres there marked
60 can in anywise be affected by any overflow or backwater from the Pequest creek.

Objected to, as leading and irrelevant, by Mr. Little.

A. I think not.

Q. Why not?

A. Because I have never seen the water run up that far upon it.

Q. Any other reason?

A. Because it lays too high for the water to reach it.

Q. How about the fall on the land being sufficient to drain it?

A. I think there is fall enough for it to be drained.

Q. For the last twenty years how have these three hundred and sixteen acres been in reference to cultivation?

Objected to by Mr. Little.

A. They have not been cultivated.

Q. How has it been in reference to their capacity for cultivation?

A. The old ditches have not been kept open.

Q. If they had been what would have been the result, and what was the result when they were kept open?

A. They could have been cultivated for any productions subject to growing on such grounds.

Q. State whether this drainage, as carried on by those commissioners, has had any effect on these lands—I mean the 316 acres.

A. Not any.

Q. State whether it ever can benefit them any?

A. Not any.

Q. Do you know these lands well, so that you speak of what you have now testified to from your own personal knowledge and observation?

A. Yes, sir.

Q. Have you had lands assessed by the commissioners; if so, how many acres, and how are they situated with reference to these 316 acres of Dr. Wurts and Mr. Kennedy?

61 A. I have a hundred and five acres assessed; mine and theirs are about alike.

Q. How much are you assessed on these one hundred and five acres?

A. Eighteen hundred and ninety dollars.

Q. Is your land benefited by this drainage, or not?

Objected to by Mr. Little, as irrelevant.

A. Not any.

Q. Why not?

A. Because it was fourteen years ahead of the drainage, just as it is now.

Q. Have you had these hundred and five acres under tillage before this drainage; and, if so, how long before, and has this drainage had any impression whatever upon these lands?

A. From fifteen to twenty years, and the drainage has had no impression upon it—no way.

Q. Have you had, at any time, any conversation with any of the commissioners of drainage, in reference to the benefit which your land would receive from this drainage?

Objected to by Mr. Little, on same ground.

A. Yes, sir.

Q. With which one of them; state the whole conversation?

A. With all of them; I wanted to know by Mr. Hoagland whether they intended to assess me or not, and I could not get an answer from him, or satisfaction whatever; I told him that if he assessed me on my lands which I had already drained according to law, and I got no returns for it, I considered it robbery.

Q. I want to call your attention particularly to a conversation with Judge Boyd as to the good this drainage would do your land; if you had a conversation with him on that subject, state that first.

Objected to by Mr. Little.

A. I requested Mr. Hoagland and Mr. Boyd to come and walk with me over my lands which I had already drained, and they done so, and when we came up from the bogs—meadows—me and Mr. Boyd was together by my wagon-house; Mr. Hoagland went

62 to the barn and got his horse, and while so doing I asked Mr. Boyd, as he now had been over my lands, what he thought of them—whether the drainage of the Pequest could do me any good or not; he said he didn't think it would profit me the first red cent; he didn't see how it could. Said I, Mr. Boyd, will

you swear to that? He said, I will, and I will tell Mr. Hoagland so when I get him by myself. When Mr. Hoagland came with his horse I told him what Mr. Boyd said about swearing to it, and Mr. Hoagland made no reply; my son was by and asked Mr. Boyd if he thought the drainage of the Pequest could do his father any good or not; he said he didn't see how it could, and he did not believe it would; that's the end of that.

Q. Has any of the commissioners at any other time had any conversation with you in which they expressed opinions similar to what you have said Judge Boyd did; if so, which, and where, and when was it?

A. No, sir; neither one of them.

Q. When was this conversation with Judge Boyd that you have here detailed?

A. It took place about three years ago, I think—somewhere about this time.

Q. Are you acquainted with the lands of Silas Cummins assessed by the commissioners?

A. Yes, sir.

Q. How near do they lie to your lands?

A. Adjoining it.

Q. How are they affected by the drainage?

A. Not any, nor never could be.

Q. Why not?

A. They lay too high; they lay above mine yet, which is higher than mine.

Q. How much above yours are they?

A. I couldn't exactly say; I would suppose near a foot higher.

Q. State, then, the reason why your lands cannot be affected by this drainage any more than Silas Cummins'?

63 A. Because I have a complete outlet—ditch—carrying the water all off.

Q. How long have you had it, and has it carried the water all off?

A. Fourteen years ahead of the drainage doing anything at all in the creek.

Q. Have you been accustomed to till this 105 acres of land assessed for the last twenty years and upwards; and, if so, what have you raised on it?

A. I have, sir—corn, wheat, rye, oats, buckwheat, potatoes, cabbage, turnips, sugar-cane, flax, timothy, and so forth.

Q. What was the value of this 105 acres before the drainage, and what's the value now, or, in other words, has this drainage increased or diminished the value of this 105 acres?

Objected to, as irrelevant, by Mr. Little.

A. Before I redeemed it it was bought for three dollars an acre; it has cost me more than the assessment now on it to get it where it is, and the drainage is a drawback on it; if I wanted to sell the farm I could not sell it for what it is worth—to hold my own—for I don't believe that it would fetch me any more (speaking of the

bog part) than what it has cost me, and, because of that, my labor would be all gone, (speaking of the bog part,) and because some of my bogs is not worth the tax I pay for it to me, nor never has been.

Q. If you should be compelled to pay this $1,890 assessment, would you have have had any consideration for it, or would it be money paid for nothing?

A. I would have none—money out of pocket.

Q. Are you acquainted with the land of Polhemus Cummins, assessed by these commissioners?

A. Yes, sir.

Q. How near does it lie to your land?

A. It adjoins me.

Q. How are his assessed lands situated in reference to yours as to lying as high or as low as yours?

A. They lay between mine and the Pequest, up along the
64 shore; they lie as high as mine; is out further; they would be, according to the fall, going toward the creek.

Q. Have the lands of Mr. Polhemus Cummins, which have been assessed, been benefited by the drainage, according to your observation?

A. No, sir.

Q. How long have you been acquainted with the Great Meadow lands?

A. All my lifetime; ever since I knowed anything.

Q. Have you observed with care the effect of this drainage on the value of the land?

A. Yes, sir.

Q. Has it, in your judgment, increased their value?

Objected to by Mr. Little.

A. Not any.

Q. The commissioners report that the lands included in the assessment amount to five thousand five hundred acres, or thereabouts, and that the benefits assessed upon them is the sum of one hundred and seven thousand nine hundred and sixteen dollars and seven cents; in your judgment would those lands bring that sum of money at a fair sale in the market?

Objected to by Mr. Little, on same ground.

A. No, sir.

Q. How near it?

A. I don't believe that it would fetch half that amount.

Q. Have you noticed the Pequest creek, in reference to its filling in with sand and other material?

A. Not much of it, I haven't.

Q. What is the distance of these one hundred and five acres of land of yours assessed from the Pequest creek?

A. Something near a mile.

Q. What's the distance of yours from Silas Cummins' assessed land?

A. I think it is a mile and quarter.

Q. Has your brother, Polhemus Cummins, a four-and-a-quarter-acre lot lying above your land, which is assessed?

A. Yes, sir.

Q. How far is that from the river?

65 A. I should think it was close to two miles.

Cross-examined by Mr. LITTLE:

Q. The four and a quarter acres of your brother, Polhemus, does not, then, adjoin his other land assessed?

A. No; more than a mile from it; it lays up against the shore.

Q. What do you mean by the term "shore"?

A. I mean where the meadow joins the highlands.

Q. Is the slope of Polhemus' land very gradual, then, from the shore down to the river?

A. Yes, sir.

Q. Was it dry before this drainage was commenced?

A. Yes, sir.

Q. As dry as yours?

A. Yes, sir.

Q. Did he cultivate it as you cultivated yours?

A. Yes, sir.

Q. Did he continue to do so up to the time that this drainage was commenced?

A. Yes, sir.

Q. Was it subject to overflow?

A. Never.

Q. Did he not sign the application for the appointment of commissioners to drain these meadows?

A. I don't know; I never saw the petition; he says not.

Q. Did your cultivation extend up to the bank of the stream?

A. Nearly a mile from it.

Q. I intended to refer to your brother Polhemus; did his cultivation so extend?

A. No, sir.

Q. How near to the banks did it extend?

A. Three quarters of a mile, if not over.

Q. Why did not he cultivate up to the bank of the stream?

66 A. Because he had too much land, and didn't need it.

Q. What was the dividing line between the land that was cultivated and the land not cultivated on his portion?

A. The outlet ditch.

Q. Did that outlet ditch run across your brother's land?

A. Right through it.

Q. How much land does he own there?

A. Two hundred and—somewhere between 250 and 300; I think a little over two hundred and fifty acres.

Q. What was the direction of the outlet ditch, the general course of it through his land?

A. A little south of west, nearly east and west, but not quite lengthwise of the meadows.

Q. On which side of the ditch was the land which he cultivated?
A. South side.
Q. Did that ditch extend through your land also?
A. Yes, sir.
Q. Through your son's?
A. Yes, sir.
Q. Was your brother Polhemus' land which he cultivated on the south side of that ditch underdrained?
A. No. sir; but he had open ditches in place of it; I have, also, and I have in addition about 8,000 tiles, and my son Silas has some, near 2,000.

The further examination is adjourned until Thursday, December 18th instant, at 10 o'clock a. m., at the Clarendon House, in the town of Hackettstown, by consent.

Parties and counsel, Messrs. Shipman and Little, met pursuant to adjournment, December 18th, A. D. 1879.

Cross-examined by Mr. LITTLE:

67 Q. When were you over what is known as the Wurts lands, which has been assessed in this case?
A. I have not been over it lately, but it is under my observation whenever I look out; I was along in it this fall three or four times cleaning the ditch along the line which joins him and me.
Q. Who dug that ditch?
A. Charley Pierce didn't dig it; but he cleaned it out.
Q. Who dug it?
A. The ditch was dug eighty years ago; I can't tell who dug it.
Q. Do you know for what purpose it was dug?
A. To give an outlet to the water from the saw-mill stream, which overflowed.
Q. Into what did the saw-mill stream empty?
A. Into the Pequest.
Q. Was it (the saw-mill stream), or not, a natural water-course?
A. No, sir.
Q. Was it an artificial water-course?
A. No, sir; perhaps I did not understand that question, I answered, where the ditch now is is not a natural water-course.

Mr. LITTLE says: I did not ask you about the ditch, I asked you about the stream.
Witness says: Then I do not understand the question.

Q. My question is whether, or not, the saw-mill stream was a natural water-course?
A. Yes.
Q. Into what did that natural course empty?
A. It entered into the Pequest by spreading over the bog meadows.
Q. Did the ditch which you have spoken of change the course of that saw-mill stream to the Pequest?
A. Yes, sir.

Q. Since you have known the ditch has, or has not, the 316 acres you have spoken of been overflown?

A. I think not.

68 Q. Has it been dry land or boggy land?

A. Part of both.

Q. Do bogs grow in dry land?

A. Yes, sir.

Q. Why don't you see them, then, on high ground?

Objected to, as irrelevant.

A. Because it is not natural.

Q. What kind of soil is natural to the bog?

A. Wet, sour land.

Q. Then this soil—this part of the 316 acres where the bogs grow—is it not naturally wet and sour land?

A. 'Tis if you overflow the main ditch.

Q. What do you mean by ditch?

A. It is the ditch that carries the saw-mill stream—the stream from the saw-mill.

Q. Is it, or not, the same ditch which you have referred to as opened eighty years ago?

A. Yes, sir.

Q. And how long do you say you have known this land and that ditch?

A. As long as I have known anything.

Q. If, then, that ditch has always been sufficient to carry off the water of the saw-mill stream so you have never known the land to have been overflown, how do you account for its boggy condition up to the present time?

A. Because the ditch wasn't kept open as it ought have been.

Q. How many years prior to this time has that ditch been kept open and cleaned up?

A. It has been cleaned out three times inside of fifty years.

Q. Can you state at what periods that was done?

A. About fifty years ago; then, about twenty-five years ago; this fall a year ago.

Q. Can you tell by whom it was cleaned out at those different times?

A. Joseph Bartow, first time; John Hawkins and my father, about fifty years ago; about twenty five years ago, myself and my

69 brother, Polhemus Cummins; last time, by the commissioners, Charles Pierce did the work.

Q. Between those different periods when you say that ditch was cleaned out, what was its condition?

A. It was filled up.

Q. And what was then the condition of the land?

A. Wet and sour.

Q. Was that true, or not, of the lands on both sides of the ditch?

A. Yes, sir.

Q. How far did that condition of the land extend from the ditch on each side?

A. From two to three hundred yards, I suppose.

Q. Not farther than that?

A. In high times of water it would.

Q. What was the condition of the land in time of high water?

A. The water spread all over it.

Q. What was the object of cleaning out and opening that ditch at the times you have spoken of?

A. To stop the overflow of the water.

Q. Were you ever over this 316 acres of land when it was not flooded by water—by high water—of the stream, but when the ditch needed cleaning out?

A. Yes, sir.

Q. Was that land wet or dry?

A. In dry times it was dry, in wet times it was wet—part of it.

Q. Did you ever know it to be cultivated?

A. Yes, sir.

Q. When and by whom, and how much of it?

A. About forty years ago by Jonathan Shotwell and John Hawkins; I should judge from fifteen to twenty acres.

Q. What crops did they raise?

A. Corn and buckwheat.

Q. In what part of the 316 acres was that corn and buckwheat raised?

A. On the north side of the main ditch.

Q. Was it immediately adjoining the ditch?

A. Yes, sir.

70 Q. Was it, or not, at the line, or near the line, of what was between the wet and dry, or——

A. The furtherest extremity of what is known as the low land was about half a mile from ditch.

Q. About how wide was that strip which was cultivated?

A. I should think about three huudred yards wide; one-half mile down the ditch.

Q. Did they raise good crops of corn and buckwheat on that strip?

A. Yes, sir.

Q. How soon was that cultivation after the time you say the ditch was cleaned out?

A. I am not positive, but suppose two or three years afterwards.

Q. You say you are well acquainted with this 316-acre tract; please tell us whether the soil immediately adjoining this ditch, and where the corn and buckwheat were raised, is different in any respect, in character and quality, from the rest of the tract?

A. Yes, sir; it is somewhat different.

Q. In what respect?

A. From the overflow of the main ditch; in high water the sediment that flowed out from the lands in times of high water, spread out on each side of the ditch and made it different from the other soil.

Q. Please to describe that difference.

A. The washes from the heavy rains from the mountain side, by

heavy waters, take in sand, mixed somewhat with some other materials, makes a difference from the black muck.

Q. Did that wash raise the lands on the margin of the stream, which was cultivated, perceptably, above the rest of the tract?

A. I think it did.

Q. How much?

A. From 10 to 12 inches, I suppose.

Q. Would, or would not, then, that increased height on the margin of the ditch keep the water, which fell upon the other
71 portion of the tract, or was thrown there in high water, from draining off into the ditch as readily as it otherwise would have done?

A. Yes, sir.

Q. Can you give any reason why the owners of that tract have never cultivated the other portion of it?

(Objected to, as irrelevant.)

A. All my reason for it is, they had too much of it; had it under rent, and more than the tenant could till.

Q. What is the present condition of that 15 or 20 acres which you said you had seen cultivated?

A. Part is mowed for hay, part is pasture.

Q. What kind of grass does it produce?

A. When it is first seeded down, for the first two or three years, good timothy.

Q. How often is it necessary to have it renewed?

A. Every 5 or 6 years.

Q. Is it usual to seed meadow lands every 5 or 6 years, with farmers?

A. Yes, sir; at least I do it.

Q. Your land is of the same character as this, to which you do it?

A. Yes, sir.

Q. Is standing water, or not, in your opinion, injurious to land?

A. Yes, sir.

Q. How near can it come to the surface without injuring the quality of the land.

A. From a foot to two feet.

Q. Do you know any reason why the person who raised buckwheat and corn on that 15 or twenty acres, never cultivated it afterwards?

(Objected to by Mr. Shipman.)

A. I suppose the reason they didn't continue on was on account of the ditch filling up—too wet.

Q. What caused the ditch to fill up?

A. The heaving of the frost, and heavy rains throwing in the sediment.

Q. How much, if any, has the bed of that ditch, along that tract of 316 acres been lowered by the commissioners?

72 A. Between 3 and 4 feet from the top surface.

Q. Does or not the land adjoining this portion of the Great Meadows, lying southerly from them, raise quite abruptly?

A. Yes, sir.

Q. So it makes the meadows a basin?

A. Yes, sir.

Q. How near to the edge of the wet lands does that ascent commence?

A. Close; right by it.

Q. What is the height of the ridge above the meadows opposite this tract of land?

A. Do I understand you now the highest—top?

Counsel says: I mean the average height of the ridge.

A. I should suppose from three to five hundred feet.

Q. You have under-drained your land, as I understand you, to a very considerable extent, have you not?

A. Yes, sir.

Q. To what extent?

A. Some near ten thousand tiles put under what I call my shore lands.

Q. What do you mean by your "shore lands?"

A. The meadows that join up against the uplands.

Q. How far from the dividing line between the wet and dry lands do your shore lands which you have thus under-drained extend toward the Pequest?

A. They are nearly two miles from it.

Q. Into what do your under-drains discharge their water?

A. Into a ditch I call a shore ditch, some nearly two hundred yards from the uplands.

Q. What is the general direction of the shore ditch?

A. It runs nearly east and west.

Q. Into what does it discharge, and how long is it?

A. Into a ditch we call the outlet ditch, a mile and a half long, or somewhere near it; the outlet, I mean ditch, was about one and a half miles long; the shore ditch would measure one-quarter of a mile.

Q. Where does the shore ditch commence, and on whose land does it end?

73 A. It commences on my son, Silas Cummins, and ends on my own.

Q. Who dug it, and when?

A. I did; some twenty years ago, or upward.

Q. How wide and how deep is it?

A. There are places that measure from 8 to 10 wide and 5 to 6 feet deep.

Q. Do you know who dug what you call the outlet ditch?

A. Myself and my brother, Polhemus.

Q. When was that?

A. From 14 to 16 years before the dredge did anything for the Pequest, and that was 4 or 5 years ago.

Q. Into what does the outlet ditch empty, and on whose land is the mouth of it?

A. Into a ditch of Mr. E. J. Post; through Post's land.

Q. Into what does the Post ditch empty, and on whose land is the mouth of it?

A. On himself; the ditch was not put through to the Pequest river, within 100 or 200 yards, so it stopped there.

Q. How does the land on the north of your shore ditch and of the outlet ditch, being between those ditches and the Pequest, compare naturally with the land on the south of them, toward the upland?

A. It was all alike.

Q. What was your object in putting the under-drains through what you call your shore lands?

A. To make mowing grounds that I could produce more hay for my horses and cattle.

Q. How did you succeed in that?

A. Just as well as I could wish to have it.

Q. How often have you cultivated that shore land, and raised corn, wheat, oats, buckwheat, potatoes, flax, within the last twenty years, or either of them?

A. First, I had it under cultivation every year for ten or twelve years; then, the frost destroying about one-half of my crops, I put it under grass for my stock—cattle of different kinds.

74 Q. Were the crops which you raised upon it good crops of various kinds, except so far as cut off with frost?

A. Yes, sir.

Q. What has been the quality of the grass, since you put it in grass, for hay and for grazing?

A. Timothy and clover, as big as it could stand, with very little exceptions.

Q. You consider, then, your drainage of your shore lands a success, do you not?

A. I do, a complete success.

Q. How has it been with your son Silas' shore lands in that respect?

A. Good as mine can be, for it lays higher than mine.

Q. And how has it been with your brother Polhemus' land in that respect?

A. The same as mine.

Q. How are your shore lands, your son's, and your brother's, adapted to grazing?

A. Good as the best of the best.

Q. In your judgment how does the Wurts tract of 316 acres compare with yours, and your son's and brother's?

A. The same as mine, if it was cultivated.

Q. When was the conversation, as near as you can fix in your mind, which you said in your principal examinatin you had with Mr. Hoagland and Judge Boyd?

A. Two years ago this fall—not positive whether in September or October; think it was in September.

Q. So far as you are acquainted with this large tract known as the Great Meadows, how does the soil compare naturally with those portions owned by yourself, your son, and your brother?

A. They are nearly alike; I think ours are a little the best because the muck is not so——

Q. If it were possible to thoroughly drain those meadows, would, or would not, such drainage greatly diminish the danger of injury of your crops from early frost?

75 Objected to, by Mr. SHIPMAN, as irrelevant and opinion.

A. Not a bit.

Q. Is the saw-mill stream which you have spoken of, known by any other name?

A. It went 40 years or more as Schmuck's saw-mill stream.

Q. Whose land lies between yours and your son's and the Pequest?

A. I was mistaken—did not understand you; Dr. Wurts' lies between us and the stream.

Q. How is the fall upon the 316 acres as compared with the fall upon your lands, your son's and your brothers'?

A. I don't think there is any difference from mine.

Q. Over what portion of your lands did you and Mr. Hoagland and Mr. Boyd walk upon the day upon which the conversation you have related occurred?

A. Over the whole of it—as satisfied as seeing the whole.

Q. How is the necessity for re-seeding your shore lands shown every 5 or 6 years?

A. It is natural for it to run out—timothy go out, something else come in.

Q. What does come in on the shore lands in place of timothy?

A. June grass.

Q. It is good for hay if cut early?

A. Very good, among the best; for pasture it is very sweet, it comes there now.

Q. So far as your observation has extended, is it, or not, true that that June grass grows on all those meadows abundantly where the land has been well drained and bogged?

A. Yes, sir.

Q. Did the water from Schmucks' saw-mill brook ever back up into your ditch so as to affect your ditches?

A. I did, sir; I wish to make an explanation; I had three ditches run from the shore into the main ditch, which gave me a
76 complete outlet until Dr. Paul told Elisha Barton, his tenant, to take out a chunk, as they call it, about ten or twelve yards in length, which, when he done, the water ran up to my shore in all three ditches, which showed which way the fall was, and how much, and the water said about eight inches, from my shore ditch out to the main ditch, on the dead level, and I had to stop it up, or I never could have drained in the world; would have been there to-day under water; it cost me a great deal of labor to fix those three ends.

Q. Where were those chunks taken from?

A. Out of the main ditch, at the mouth of my lane, what is called my "willow road," marked "willow road" on map "Exhibit A."

Q. What purpose was that taken ont of the main ditch, if you know?

A. So the water of the saw-mill stream could run down through the old main ditch; the reason why it was let in was that Dr. Paul had dug two ditches clean in the creek, above where the old main ditch is now, one-quarter or one-half mile above this chunk; that chunk that I spoke of was a part of the filling up of the main ditch; the object of it was to let the water down into the main ditch and the other two ditches.

Q. The way, then, if I understand you, that that chunk you speak of benefited you, that it prevented the water from the main ditch from backing up over your land?

A. Yes, sir.

Q. Was it, or not, an obstruction to the flow of the water through the main ditch?

A. Of course it was, but the water had been turned above it, through other channels.

Q. Did your ditches, then, empty into the main ditch below this obstruction?

A. Yes, sir.

Q. Then, when the doctor cut through that obstruction, or removed it, and opened the natural channel of the saw-mill stream through the main ditch, the water of that stream prevented a discharge of the water from your ditches into this main ditch?

77 A. Yes, sir; entirely so, and makes me worse than ever.

Q. You used the expression "my shore ditch line;" what did you mean by that?

A. I miss-spoke my line, if I used that expression.

Redirect by Mr. SHIPMAN:

Q. Now, Mr. Cummins, you look at the map "Exhibit C," the map of the Wurts land, and state where the Schmuck saw-mill stream is, and which is the old ditch, made some near eighty years ago, as you have stated in your cross-examination.

A. The line marked "Schmuck saw-mill brook" is the saw-mill stream; the old ditch is designated by two small lines and the word "ditch."

Q. Was it, then, the waters of the Pequest creek or the waters of this Schmuck mill stream that effected and run over these 316 acres of what Dr. Wurts and Mr. Kennedy land?

A. It was Schmuck's saw mill stream overflowed.

Q. And that only?

A. With some of the shore water springs combined.

Q. Can you show on the map where any of those were; those shore-water springs?

A. Yes, sir; some commenced right at the junction of the road leading from Meadville to Danville, and also Warrenville, on the

map; the springs commenced about where the roads forked together on the map; all along the shore every one hundred or two hundred yards are heavy springs.

Q. Where did the outlet of those springs empty themselves on these 316 acres?

A. Nowhere.

Q. Did they run on these lands?

A. They run, first ,on Dr. Wurts' land—all along his shore, on his own land.

Q. Did they run into this old ditch, made 80 years ago, along with the Schmuck mill stream?

78 A. A part of them.

Q. What became of the other part?

A. Run down on my son Silas'.

Q. Does the drainage of the Pequest, as made by the commissioners, affect these waters in any way, or the Schmuck mill stream in any way?

A. Not a bit.

Q. Where, about, did Dr. Paul dig those two ditches you spoke of? Can you show their location on this map?

A. Somewhere about the middle of my land, as marked on the map (Wurts' map) where my lane came out, just at the place where figures 2.72 above high water mark are; just above that, within a few feet up stream, is where Dr. Paul's lower ditch started. About 200 yards above that the other ditch started.

Q. How far did the Doctor extend those two ditches?

A. Into the Pequest.

Q. How far below the Doctor's lower ditch was this chunk or filling up of the old ditch you have spoken of?

A. Right by it.

Q. When these two ditches of the Doctor were open, did it drain this Schmuck stream and these springs?

A. In part.

Q. Why not entirely?

A. Because the main ditch stream was too full to let the waters off, and it ran down over me, the most of it.

Q. Did it run off these 316 acres, then Wurts', on you?

A. Yes, sir; the most of it.

Q. Then these two ditches did drain these 316 acres, but then some of it over you?

A. I said in part.

Q. What was required to carry it all off?

A. I had to dig a ditch myself to carry off what the main ditch didn't carry; so I had to dig a ditch all around my 105 acres, with a little exception, to carry off that water which overflowed my lands.

Q. Was it necessary to reduce the Pequest creek or to widen it, or to do anything to it, to drain these 316 acres of land?

79 Objected to by Mr. Little as irrelevant, and not a proper subject of re-examination.

A. Not any.

Q. What will drain and keep dry these 316 acres of land?

Objected to by Mr. Little, for same reasons.

A. By ditching into the main channel of the Pequest.

Q. Will that do it?

A. Yes, sir.

Q. Does any of the water which ran upon your 105 acres before you drained it, as you have stated, come from the overflow of the Pequest, or from the Pequest at all?

A. Not a bit.

Q. Did Dr. Paul ever cultivate any part of this 316 acres?

A. He bogged off some 20 or 30 acres with a bog machine. He never plowed it or sowed it.

Q. Have you observed these 316 acres of the Wurts land since the commissioners have ceased working? If so, state whether anything they have done has produced any beneficial effect upon it whatever.

A. The opening of the main ditch will help it along the shore of the main ditch of the saw-mill stream.

Q. What I asked you was whether you had observed whether any impression had been made on these 316 acres by the work of the commissioners?

A. I have not as yet.

Q. Of what is the soil of these lands, which lie near the Pequest, composed?

A. Black muck.

Q. Is that a productive soil unless it is mixed with other ingredients?

A. It will produce a few crops; after that it is worthless.

Q. Take these lands which lie on the Pequest, and which are black muck, as you say. How much will it cost to mix them with other soils to make them productive—I mean per acre?

A. More than they are worth.

Q. Give us an idea of the amount per acre?

80 A. I should want near the double of the price for what they are assessed for.

Q. Want near the double of the price they are assessed for to do what?

A. To mix the soil with the upland; to make them productive; to be durable.

Q. This June grass you speak of, does that grow in black muck?

A. It does, when properly drained.

Q. How long does that pasture last, and what effect has dry weather upon it?

A. It commences early in the spring and lasts till late in the fall, except in a dry time, then it fails.

Q. What was the old assessment, the assessment made before this last one, on your 105 acres of land?

Objected to, as irrelevant, by Mr. Little.

A. No difference; the same as the last one.

Q. Did you have any particular conversation with Mr. Amos Hoagland about not assessing your lands; and, if so, what reason, if any, did he give why they should have to assess it?

Objected to, as not a matter for re-examination, by Mr. Little.

A. Yes, sir, I have; he said he dare not exempt me; I wanted to know the reason why; said that the rest would find fault with him if he exempted me, and that I need not pay anything, only according to what benefit I received; nothing else.

Q. When was that?

A. About three years ago last September, I think.

Q. Will this drainage, as made by the commissioners, be of any use on any of the lands along the Pequest unless the owners make cross drains and under drains?

A. It will be none, except where it overflowed.

Cross-examined:

Q. I think your have not fixed the time when Dr. Paul removed that obstruction from that main ditch; please do so.

81 A. I have nothing to tell certainly; I think I said about 20 years ago, and that is as near as I can.

Witness being shown map marked "Exhibit A," is asked:

Q. How near, according to your recollection, was the mouth of your ditch, at the main ditch, at the end of the road marked on this map "willow road"?

A. Right by it.

Q. In which direction from that point did the ditches of Dr. Paul leave the main ditch, easterly or westerly?

A. Easterly, and they run a northwesterly course.

Q. If I understand you, you mean to say that the purpose of these ditches of Dr. Paul was to carry the waters of the saw-mill brook northwesterly toward the Pequest, and to leave the main ditch, below the mouth of your ditch, to carry off the water that came through your ditch; is that so?

A. That is the way I understood it at that time.

Q. How does the water which flows through your shore ditch reach the Pequest; that is, through what outlet?

A. Through a ditch cut through my brother['s] into E. J. Post's lot, running through a ditch of his cutting until near 100 or 200 yards, when it runs its way into the Pequest the best way it can.

Q. Do you know whether Dr. Paul's ditches extended to the Pequest, or whether they discharged into a slough some distance from the river?

A. They discharge in a slough, for I helped dig them out myself.

Q. What experience have you had in the cultivation or treatment of lands similar to those included in the Great Meadows? Have you had any, except your own lands, which you have stated?

A. I have no experience, only on my own lands, and observation on other lands in the neighborhood and on lands in other localities similar to these.

Q. What will drain and keep dry these 316 acres of land?

Objected to by Mr. Little, for same reasons.

A. By ditching into the main channel of the Pequest.

Q. Will that do it?

A. Yes, sir.

Q. Does any of the water which ran upon your 105 acres before you drained it, as you have stated, come from the overflow of the Pequest, or from the Pequest at all?

A. Not a bit.

Q. Did Dr. Paul ever cultivate any part of this 316 acres?

A. He bogged off some 20 or 30 acres with a bog machine. He never plowed it or sowed it.

Q. Have you observed these 316 acres of the Wurts land since the commissioners have ceased working? If so, state whether anything they have done has produced any beneficial effect upon it whatever.

A. The opening of the main ditch will help it along the shore of the main ditch of the saw-mill stream.

Q. What I asked you was whether you had observed whether any impression had been made on these 316 acres by the work of the commissioners?

A. I have not as yet.

Q. Of what is the soil of these lands, which lie near the Pequest, composed?

A. Black muck.

Q. Is that a productive soil unless it is mixed with other ingredients?

A. It will produce a few crops; after that it is worthless.

Q. Take these lands which lie on the Pequest, and which are black muck, as you say. How much will it cost to mix them with other soils to make them productive—I mean per acre?

A. More than they are worth.

Q. Give us an idea of the amount per acre?

80 A. I should want near the double of the price for what they are assessed for.

Q. Want near the double of the price they are assessed for to do what?

A. To mix the soil with the upland; to make them productive; to be durable.

Q. This June grass you speak of, does that grow in black muck?

A. It does, when properly drained.

Q. How long does that pasture last, and what effect has dry weather upon it?

A. It commences early in the spring and lasts till late in the fall, except in a dry time, then it fails.

Q. What was the old assessment, the assessment made before this last one, on your 105 acres of land?

Objected to, as irrelevant, by Mr. Little.

A. No difference; the same as the last one.

Q. Did you have any particular conversation with Mr. Amos Hoagland about not assessing your lands; and, if so, what reason, if any, did he give why they should have to assess it?

Objected to, as not a matter for re-examination, by Mr. Little.

A. Yes, sir, I have; he said he dare not exempt me; I wanted to know the reason why; said that the rest would find fault with him if he exempted me, and that I need not pay anything, only according to what benefit I received; nothing else.

Q. When was that?

A. About three years ago last September, I think.

Q. Will this drainage, as made by the commissioners, be of any use on any of the lands along the Pequest unless the owners make cross drains and under drains?

A. It will be none, except where it overflowed.

Cross-examined:

Q. I think your have not fixed the time when Dr. Paul removed that obstruction from that main ditch; please do so.

81 A. I have nothing to tell certainly; I think I said about 20 years ago, and that is as near as I can.

Witness being shown map marked "Exhibit A," is asked:

Q. How near, according to your recollection, was the mouth of your ditch, at the main ditch, at the end of the road marked on this map "willow road"?

A. Right by it.

Q. In which direction from that point did the ditches of Dr. Paul leave the main ditch, easterly or westerly?

A. Easterly, and they run a northwesterly course.

Q. If I understand you, you mean to say that the purpose of these ditches of Dr. Paul was to carry the waters of the saw-mill brook northwesterly toward the Pequest, and to leave the main ditch, below the mouth of your ditch, to carry off the water that came through your ditch; is that so?

A. That is the way I understood it at that time.

Q. How does the water which flows through your shore ditch reach the Pequest; that is, through what outlet?

A. Through a ditch cut through my brother['s] into E. J. Post's lot, running through a ditch of his cutting until near 100 or 200 yards, when it runs its way into the Pequest the best way it can.

Q. Do you know whether Dr. Paul's ditches extended to the Pequest, or whether they discharged into a slough some distance from the river?

A. They discharge in a slough, for I helped dig them out myself.

Q. What experience have you had in the cultivation or treatment of lands similar to those included in the Great Meadows? Have you had any, except your own lands, which you have stated?

A. I have no experience, only on my own lands, and observation on other lands in the neighborhood and on lands in other localities similar to these.

Q. What other localities do you refer to?

82 A. In Danville and Jersey City; across the flats between Jersey City and Newark; the lands in Danville are part of the Great Meadows.

Q. In what way will this opening of the main ditch by the commissioners benefit that part of the 316-acre tract along the main ditch, as you say?

A. By the waters ceasing to overflow.

Witness being shown map "Exhibit C," is asked:

Q. Were, or not, the springs which you refer to upon your re-examination between the road marked upon this map and the line marked "exterior line" on this map of survey, or were they above the road?

A. Between the road and the survey.

Q. How much higher were they than the average of the meadow below that exterior line?

A. From 1 or 2 to 3 feet.

Q. Were they many or few in number?

A. They were many.

Q. Was the discharge of water from them in quantity large or small?

A. Many of them were large; others were small; some large enough to turn a churn right along.

Q. Are they still there, or not?

A. Yes, sir.

Redirect:

Q. Are these springs affected by dry weather?

A. Some of them are.

Q. You say that the commissioners opened the main ditch; show how far from the creek they opened the ditch in reference to these 316 acres of land.

A. The line of Mr. Wurts runs about 200 yards below where I and my brother join lands. I would think it must be 400 to 500 yards from the creek to Wurts' line.

Question repeated.

A. They cleaned out on Mr. Wurts' all the way up after they came to his line.

83 Q. Do you mean all the way up to the saw-mill road?

A. They have cleaned all the way up within 100 yards of the road marked "C."

Q. Who did that work?

A. Charley Pierce did it through Dr. Wurts' for the commissioners.

Q. Can Dr. Wurts make that ditch all the way from the road you speak of down to the creek over his own land, and so drain these 316 acres of land?

A. Yes, sir.

Q. You say that Dr. Paul's ditches stop in a slough this side of the creek; did they stop on what are now the Wurts lands, and

could they be extended at any time the owners of the Wurts lands saw proper to do so to the creek itself?

A. I think it was on their own lands, and could be extended all the way through.

Q. The land that you speak of as having been used and drained by Dr. Paul—are they these same lands set down to Mrs. Wurts?

A. Yes, sir.

Q. All, then, that is necessary, if I understand you correctly, for Dr. Wurts to do to drain these 316 acres, is to keep open the main ditches and such cross ditches as may be required on these lands?

A. Yes, sir; and make a complete success.

Q. How far was that slough you spoke of from the Pequest?

A. I think some less than 100 yards; the outlet of the slough found its way to the creek, so that there was no use of ditching any farther.

ISAAC CUMMINS.

Sworn and subscribed before me, this 18th day of December, A. D. 1879.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

84 *Polhemus Cummins.*

Q. Where do you reside?

A. Along the Great Meadows.

Q. And have you resided there—how long?

A. Twenty-six years, latterly; I am sixty-three years of age.

Q. Where have you resided during all your life?

A. Sixteen years in the western part of New York, the remainder part where I now live.

Q. When did you spend those sixteen years in New York?

A. From the age of my twenty-first year until I returned, twenty-six years ago, or about that.

Q. Have you resided all your life, except the sixteen years, on these lands on which you now reside?

A. Yes, sir.

Q. What has been your occupation during all these years?

A. Farming.

Q. Have any of your lands been assessed by these commissioners in their late assessment; if so, how many acres?

A. Yes, sir; 227 80-100 acres.

Q. What amount is assessed upon the 227 80-100 acres?

A. Four thousand seven hundred and eighty dollars, to the best of my recollection.

Q. What was the market value of these 227 acres before these commissioners did any work of drainage upon the Pequest?

A. In my judgment, it would not exceed $15 to $20 per acre at the very best.

Q. What is the fair market value of these same lands to-day?

A. I am afraid it would be less than that; I have offered to sell a portion of it at ten dollars per acre.

Q. Will these 227 80-100 acres bring in the market, at a fair market price, the amount of the assessment laid upon them?

85 A. I think not.

Q. Have these 227 80-100 acres been benefited by the drainage?

A. No, sir; not in my judgment.

Q. Can they be benefited by it; and, if not, why not?

A. I think they cannot, because they are above the flow of water from the Pequest, and cannot be benefited without the owner ditches it all up in small lots to hold and carry away the water.

Q. Had you had any portion of these 227 acres under cultivation before this drainage was begun; if so, how many acres?

A. Yes, sir; I have; I should judge from 50 to 75 acres of it.

Q. For how long a time have you had these 50 to 75 acres under cultivation?

A. About 20 years; right away after Dr. Paul made his exchange to Mr. Wurts, who is now dead, father of Dr. Wurts.

Q. Do these 227 acres lie in one body, or is some portion of it in a detached lot; if so, how much?

A. Four acres and eighty-hundredths is detached from the rest.

Q. Where do those four and eighty-hundredths acres lie?

A. My name is marked on map C about where they lie; up by the road; the mill stream runs through it?

Q. Are those lands benefited by the drainage or not?

A. Not any.

Q. Do you know the lands of your brother, Isaac Cummins, which have been assessed by the commissioners?

A. I do.

Q. Do you know the number of acres assessed and the amount for which they are assessed?

A. I think it is 105 acres; the amount is eighteen hundred and some dollars; I have heard him tell here and seen it on paper, but don't recollect now.

Q. Have those lands been benefited by the drainage?

A. I think not.

Q. Why not?

86 A. Because it lies above high-water mark.

Q. Has he had these lands under cultivation; if so, how long?

A. The most of it has been under cultivation for about 20 years.

Q. Do you know the value of these lands?

A. Well, I think I ought to know something about it.

Q. What was the market value of these lands before the drainage?

A. Some of it was—I should not consider it worth more than $15 to $20 per acre before the drainage.

Q. What is the market value of them now—I mean the 105 acres?

A. Not any more than previous to the drainage.

Q. In your judgment, will these 105 acres bring, at a fair market value, the amount of this assessment laid upon them?

A. I think not.

Q. Are you acquainted with the lands of Silas Cummins, which have been assessed by the commissioners?

A. Yes, sir.

Q. Have those lands been benefited by the drainage?

A. I think not.

Q. Can they be?

A. No.

Q. Why not?

A. Because they are so situated that the drainage can't effect them; the fall is not in a shape that they can be affected; the fall in the land is the other way.

Q. Do you know how many acres are assessed to him?

A. I don't know.

Q. Do you know the value of his lands that are included in this assessment?

A. I should suppose about the same as his father's and my own.

Q. Are those lands of Silas Cummins worth any more now than they were before the drainage?

A. I think not.

Q. Have you been well acquainted all the years you have spoken of with these lands called the Great Meadow lands?

87 A. I have.

Q. What kind of soil is the land lying on the Pequest, and within its overflow, composed of?

A. It is composed of muck, mostly.

Q. Is that land good for cultivation without being intermixed with other soils?

A. It is not.

Q. How does it act if it is drained off?

A. It is too light of itself.

Q. How much will it cost per acre to commingle it with other soils, and make it productive?

A. About as much as the estimated price I put upon it; fully that, anyhow.

Q. Will the lands lying on the Pequest be benefited by this drainage at all, unless the owners of the land make side ditches and other ditches to drain the land?

A. I think some of it may be; that which lays right along the bank of the creek for a certain distance; that that lays so far away cannot be, without ditching by the owners, and spending a great deal of labor to do it.

Q. Would that ditching be attended with much or little expense?

A. With a good deal of expense.

Q. Can you tell about how much an acre?

A. That is pretty difficult.

Q. The lands included in the report of the commissioners comprise 5,500 acres, or thereabouts, and they are assessed for benefits to the amount of $107,916.07; will these lands bring that money at a

fair sale in the market, or are they worth that money in your judgment to-day?

A. I think not; I think they won't bring any such money; no, sir, they are not worth it.

Cross-examined:

Q. How much land do you own up there?

A. Four hundred and one acres, Mr. Garrison made it.

88 Q. Are the 50 to 75 acres which you have spoken of in a good state of cultivation?

A. As good as can be in consideration of the labor that has been done to it.

Q. On which side of the shore ditch spoken of by your brother Isaac does these 50 to 75 acres lie—the side toward the Pequest or the other?

A. On both sides of the shore ditch.

Q. About equally divided by the ditch?

A. Not more than 3 acres difference; a little the most on the northwest—the river side—the side opposite from my house.

Q. Is there any differences, naturally, in the soil on the sides of that ditch?

A. Yes, sir.

Q. How does it differ?

A. The flow of the water from the mountain has carried the sand and other material down to the depth of 2 or 3 feet in some places, and makes it more like the upland, only it is of a finer grade.

Q. The soil next to the upland is the better, naturally, is it not?

A. Yes, sir.

Q. Has that wash from the hill covered the principal part of that cultivated land on the side toward the hill, or not?

A. Yes, sir.

Q. To what depth, on an average?

A. That is hard to tell; some places more than others; in my judgment, would not want to say more than two or three inches, although in some places it is piled in heavily.

Q. Independent of the wash of the hill, is the soil on the opposite sides of the shore ditch naturally substantially the same?

A. No, sir; it is not.

Q. Wherein is the difference?

A. On the northwest side is black muck from six inches to three feet.

89 Q. What was the soil on the southwest side, independent of the wash?

A. Sandy loam.

Q. What crops have you raised on the northwest side of this ditch, on the cultivated ground?

A. Corn, buckwheat, wheat, rye, oats, flax, grass, potatoes.

Q. Were your crops good, or not?

A. Have had some that were good enough.

Q. What was the trouble with the others?

A. Entire failures, in consequence of frost and drouth, and sometimes too much fall of rain.

Q. What had been your most frequent cause of failure of crops?

A. Frost.

Q. How far from that ditch does the cultivated land extend in a right line on the northwest side?

A. Two hundred and eighty some paces, to the best of my memory, I believe.

Q. Does it extend the whole length of this ditch through your land.

A. No, sir.

Q. How long is the strip along the ditch cultivated?

A. About 500 pards.

Q. And what is the whole length of the ditch through your land?

A. I have two of them, nearly a mile long each, and parallel with each other.

Q. And is this cultivated land on the northwest side between the two ditches?

A. Yes, sir.

Q. What kind of crops did you raise on the cultivated land adjoining the shore ditch, and on the southwest side of it?

A. The same kind that I testified I raised on the other side.

Q. And how did the crops raised on the southwest side compare in quality with those raised on the northwest side, between the two ditches?

A. They were better on the southwest side.

90 Q. Were they affected by the frost as quickly as those on the southwest side?

A. No, sir.

Q. How did you account for that difference?

A. The difference in the land, because it's a heavier soil.

Q. Is it or not better underdrained?

A. No, sir.

Q. Does it lie any higher than the land on the northwest side?

A. Yes, sir.

Q. Is it or not in consequence of the wash from the hill any drier than the land on the northwest side?

A. It is not.

Q. Is it drier from any cause than the land on the northwest side of the ditch?

A. It is not.

Q. Does your cultivated land on the northwest side of the ditch extend to the second ditch you have spoken of?

A. It does not.

Q. How is that cultivated land that you have spoken of adapted for grazing purposes?

A. The most of it is good—very good.

Q. Do you know of this grass called by your brother June grass?

A. Yes, sir.

Q. Is it or not what is sometimes called blue grass?

A. Some people call it so, but I have never understood it as being really blue grass.

Q. Do you know of any reason why the rest of your low land, if properly drained, should not be equal in quality with that part which you say you have cultivated?

A. I think I do; it's too light; the soil is too light.

Q. How have you tried it to see?

A. I have tried it by drawing hundreds of loads of upland soil and spreading it over it.

Question being repeated, the witness is asked:

91 Q. Do you know of any reason why the rest of your low land, if properly drained, should not be equal in quality with that part which you say you have cultivated?

A. I think I do.

Q. State it.

A. Because it's the same as that spoken of on the northwest side of the eight-foot ditch as we call it, on us, for I have spread hundreds of loads of the upland soil, and have seen the benefits from it.

Q. The eight-foot ditch has not been spoken of by that name before; has it any other name?

A. It has not below my east line, which is the line between me and my brother Isaac.

Q. Is it or not, then, the same ditch which your brother called the shore ditch, leading through your land to Mr. Post's?

A. It is not; it is an extension of the same ditch, but doesn't lead through my land to Mr. Post's, as he testified.

Q. Where does it lead?

A. It leads to the bridge between Mr. Post's and Samuel Green.

Q. Does it terminate at that bridge?

A. No, sir.

Q. What is that bridge over?

A. Over the waters passing down the eight-foot ditch in question.

Q. At what point between Mr. Green's and Post's land is that bridge?

A. I think it is near the northwest corner of Mr. Green's land, as near as I can tell.

Q. Does the ditch from the boundary line between Post's land and the Green farm, or does the Green farm extend over the ditch?

A. Above the bridge it extends over the ditch; below the bridge it extends to the ditch, if I understand where his lines are, and I think I do.

Q. Can't you describe the location of that bridge a little more definitely?

A. It's on the road that leads to Mr. Post's—Post's island road.

92 Q. Through whose land does the ditch run below the bridge?

A. It runs between Mr. Post's and Green's, part of the way down, and then joins Mr. Post's and Scranton's, if I understand the purchases.

Q. The soil which you stated that you had drawn and spread upon this low land, was it spread on the northwest side of this ditch?

A. Mostly on the northwest side.

Q. Was it or not spread on that part of the land on the northwest side which you say you have cultivated?

A. It was.

Q. How near can the water come to the surface of farming land without injury to the crops?

A. I should think perhaps from a foot to eighteen inches, and maybe two feet for what I know.

Q. Have you experience upon that subject from which you can speak?

A. I have.

Q. Well, give it to us?

A. By ditching; cutting these plots up in small lots by ditches.

Q. How did that show you how near the water could come to the surface without injury to the crops?

A. It ran off through my outlet ditches.

Q. Is that your whole answer?

A. Yes.

Q. Would the character of the soil make any difference as to the effect of the nearness of the water to the surface or not?

A. I think not.

Q. Why may not the whole of those meadows, then, be successfully bogged and cultivated without draining?

Objected to by Mr. Shipman, as irrelevant, and on a subject on which he is not an expert.

A. It can't be done.

Q. Why?

Same objection.

A. Because it's too light; nothing but muck to a certain extent.

93 Q. Is that the only reason?

A. I think it is.

Q. They are not, then, and never have been, too wet for cultivation, if I understand you, if the only objection heretofore has been that the soil is too light for cultivation; is that so?

Objected to by Mr. Shipman, on same grounds.

A. Before draining they could not be cultivated.

Q. Why, how near has the water come to the surface heretofore?

A. It comes on the surface from the clouds often in abundance.

Q. Is that your only answer?

A. No, sir; it has to have time to pass off through our ditches; that's all.

Q. Has the whole of those meadows heretofore been so ditched as to carry off this water that you have spoken of, and leave the surface sufficiently dry for cultivation?

A. No, sir.

Q. In your judgment, has it been possible in the past to have drained these meadows by open ditches, and run cross drains so as to make the surface sufficiently dry for cultivation?

Same objection.

A. Not all of them.

Q. What proportion of them could have been?

Same objection.

A. I speak of my own lands and my brother's above me, and my nephew's; more than three-quarters of ours could be drained without any labor of the commissioners.

Q. Have you tested it to see how near the surface the water stood on your land between the two ditches which you have spoken of?

A. I have by ditching and seeing the water, together with the measurement.

Q. Have you ever made an examination upon the land itself for that purpose at any distance from the ditch?

Objected to, as irrelevant and unintelligible.

A. I have.

94 Q. At what distance from the ditch did you make the examination?

A. Between one and two hundred yards, and found it became necessary to make small ditches to lead the water in the main channel; or, in other words, the outlet ditch.

Q. You have not yet told us how near the surface of your cultivated land between the ditches you found the water; will you tell us?

Objected to by Mr. Shipman, as irrelevant.

A. In times of heavy fall of rain there would be water so the ditches are nearly full, and when it was dry, nothing at all in the ditches; no water.

Q. Perhaps you have not understood the question which I designed to ask you; have you ever made any examination upon your cultivated land between the ditches to see how near the surface of the land the water stood in an ordinary season?

A. I understood it, and I have examined, too, and I know it has been, both in wet seasons and dry.

Q. I do not now speak of the ditches, I speak of the land which you have cultivated?

A. I speak of the same.

Q. Tell us, then, how near the surface, upon such examination, you found the water?

Objected to, as irrelevant and answered already.

A. Within, perhaps, from a foot to fourteen or sixteen inches.

Q. When, and for what purpose, was that examination made?

A. At the times of heaviest rains, so as to know the necessity of more ditches, if necessary, to accomplish a success to drain those lands which I have tilled.

Q. How soon after the heavy rain did you make the examination?

A. As soon as the rains passed over; as soon as they stopped, if you please.

Q. Could you tell whether the water which had fallen had been absorbed by the soil, or had passed over the surface into the ditch?

95 Same objection.

A. Yes, sir.

Q. Which was it?

A. Well, it soaks through the soil and passes into the ditch in such land always; it takes but a very short time for it to disappear from the surface.

Q. Have you ever known any cattle to be mired on your or your brother's cultivated low land adjoining this ditch since it was dug?

A. No, sir; might as well try to mire them out here in the street.

Q. Have you known cattle to be mired on any of the low lands owned by yourself or your brother since that ditch was dug?

A. No; I have not.

Q. Not in twenty years?

A. I have not.

Q. Did you ever expect that this large tract of land, called the Great Meadows, was to be effectually drained by the work assigned to these commissioners, of lowering the Pequest and opening it, without any necessity on the part of the owners of the land to ditch their land?

Objected to by Mr. Shipman, as irrelevant, and as calling for his opinion on a subject he knows nothing about.

A. No, sir; not with their labors neither.

Re-examined by Mr. SHIPMAN:

Being shown "Exhibit E," on the part of Polhemus Cummins and others, is asked:

Q. Did you deliver the paper, of which that is a copy, to Mr. Amos Hoagland?

Objected to, as not being the original, and as being offered as a copy without any notice to produce the original.

A. I did.

Q. When?

96 A. Just before they commenced to lift the dirt out of the Pequest. I don't remember just the period of time. I don't remember just the date particularly. I suppose it was in the time of the date, or about that time—August 29th, 1874.

Q. Did all the persons whose names appear on this copy sign with their own hand the paper which you served on Mr. Amos Hoagland?

A. Not all of them. Some of them requested me to sign their names for them, and I done so.

Q. With those exceptions, did all the rest sign their own names?

A. They did.

Recross-examination, by Mr. LITTLE:

Q. Mr. Cummins, who were the parties who requested you to sign their names?

A. Patrick Welsh was one, and this gentleman, Eli Lundy, I think his name is, was another. I don't remember particularly others. There were others. I think Moses Dickerson was another.

Q. You say that it was served just before they commenced to lift the dirt out of the Pequest; where did they commence to lift the dirt?

A. I don't know that I could answer that exactly.

Q. How do you know that they had not commenced at that time?

A. In my best recollection, that is the time, or about the time, I served it on them. I see them at work previous to this, or about the time that I served it on them.

Q. Where did you see them at work?

A. Below the Larrison bridge.

Q. Doing what?

A. Cutting away the timber, trees, and removing them.

Q. Was that the first work that the commissioners did?

97 A. No, sir.

Q. Do you know how long they had been at work prior to that?

A. I don't, exactly, but they commenced in the spring of that year to survey; at least they passed through my place then, Mr. Day, Mr. Garrison, and the chain-bearers.

Q. Who circulated this paper?

A. I did.

Witness says he desires to make a correction of his testimony in answer to the question "Does your cultivated land, on the northwest side of the ditch, extend to the second ditch you have spoken of"? and to which he answered, "It does not," and wishes to say that it does extend to it.

Cross-examination:

Q. Does this ditch, which you have called the eight-foot ditch, extend easterly of your land and through your brother Isaac's land?

A. It extends easterly of my land, in a direct line. I don't know whether it goes to the easterly line of my brother Isaac or not.

Q. Did you hear your brother Isaac examined in this case?

A. I did.

Q. Is, or not, that part of this ditch, which is upon his land, the same which he said ran from his land through yours into Post's?

A. No, sir; it is not the same ditch.

Q. Is the part of the ditch, or his land which you've spoken of, which is on his land, northerly or southerly from the ditch which he described?

A. It was on the southwest side, toward the hill.

Q. Is there a ditch there, as he said, through his land continuing through your land into Post's land?

A. There is; right on the line.

98 Q. Are these then the two parallel ditches which you have spoken of as running through your land?

A. No, sir; they are not.

Q. Then are these two ditches parallel through your land?

A. Yes, sir.

Q. The third ditch through your land, which you speak of, is it northwest or southwest of the ditch which your brother described?

A. Northwest.

Q. It is near the river then, is it not?

A. It is.

Q. What is the distance between that ditch and the one your brother described?

A. About four hundred yards; it may be a little over.

Q. Was any portion of the land you cultivated between these two last-mentioned ditches?

A. No, sir.

Q. Did that third ditch extend up into your brother's land?

A. It is the same ditch that Mr. Hoagland opened, called the main ditch, or line ditch—the same ditch I opened twenty years ago.

Q. Called also, is it not, Schmuck's saw-mill brook?

A. Yes, sir.

Q. Did or not your drains formerly run into that main ditch?

A. No, sir.

Q. Did any of them run into what was called the Wadsworth ditch?

A. No, sir; it run out of it to our drainage.

Q. Where did the water come from that ran out of the Wadsworth ditch to your drainage?

A. It came down from the saw-mill—from Schmuck's saw-mill, because we intersected that ditch about twenty years ago, after we had cleaned it out, with our ditches running north and south, from the hill you might say, in order to make success, so that we might occupy and cultivate these lands, and found it a complete failure, which necessitated us to make the middle ditch, which is

99 spoken of, or the outlet ditch, running southwesterly through my lands down to Post's land.

Q. What is the distance from your northerly corner, at the main ditch, to the outlet of the old Wadsworth ditch, or Schmuck's saw-mill stream at the Pequest?

A. It is something near three-quarters of a mile to the spring run that passes out from the white-oak island, running on to the creek.

Q. And how far from the spring run to the outlet?

A. About half a mile; the whole distance being about a mile and a quarter.

Q. How do you account, then, for the water of Schmuck's saw-mill stream flowing on your land instead of running freely through this Wadsworth ditch into the Pequest?

A. Because it comes down to the east end of Post's island, and the channel, near the mouth, runs into the sand, or hard soil you might say, and large stones or rocks crosses the bed of the stream; and further, it's higher; it runs on to higher ground; they made a mistake in running the ditch, and I told Mr. Hoagland so in the first place, when he was there with me and walked over the ground.

Q. Describe, as particularly as you can, where that higher ground is that you have spoken of?

A. It begins to rise, I think, as nearly three hundred yards above the mouth, where it enters into the island run that goes from the spring, which is near, or a little above, the upper end of the white-oak island, which causes this swell.

Q. On whose property is that white-oak island?

A. On my own.

Q. It was the location of the Wadsworth ditch, if I understand you, which you told Mr. Hoagland was wrong?

A. Yes, sir.

Q. In fact, did or not the water of the sawmill brook below your land, find its way into the Pequest through several different small streams, as well as through the Wadsworth ditch?

100 A. Not that I know of; I never followed but the one stream.

Q. This most southwesterly of the three ditches that you have spoken of on your land, the one nearest the highland; into what did it discharge?

A. It discharged down under the bridge that I spoke of in the first place.

Q. Did the ditch your brother described discharge at the same place?

A. At the same place.

Q. Does the muck extend further into the land than the waters of the Pequest used to extend in times of very high water, or not?

A. Yes, sir.

Q. What, in your opinion, produces muck?

A. Weeds, timber, grass, and all kinds of vegetables that grows and falls on to wet land.

Q. You don't find it except in wet land, do you?

A. I have seen it on hills; not so much as in wet lands.

Q. I notice that in this notice which you served on Mr. Hoagland, you state, "we are determined to appeal to legal authorities to stop further proceedings;" did you ever do so?

Objected to by Mr. Shipman.

A. We are trying to do so now.

Q. Is this the legal proceeding which you contemplated in that notice?

Objected to by Mr. Shipman.

A. This seemed to be our only chance—many of us—myself also.

Q. What did you mean by "further proceedings," then; "stop further proceedings"?

Objected to by Mr. Shipman.

A. We asked them in this notice to cease their work, hoping that they might take heed what we said—the community; the people that own the land; the right owners—without getting in trouble as we have now.

POLHEMUS CUMMINS.

101 Sworn and subscribed before me, this 19th day of December, A. D. 1879.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

During the examination of witness, Polhemus Cummins, objections were made by the counsel for the commissioners to certain questions that were asked by the counsel for the expectants, and it was agreed that they, the evidence, should be taken subject to objections to be stated at the close of the examination.

Mr. Little now makes a general objection to so much of the evidence of Polhemus Cummins as relates, and to all evidence which relates, to the value of the lands assessed by the commissioners, either before or since the drainage, and to all evidence that has been, or may be, offered to show that the lands assessed have not been benefited by the drainage, or that they do not lie within the bounds of what has been called the geological survey, or which has been offered, or may be offered, to prove that the work of the commissioners has not been done or completed according to the plan or system of drainage adopted by the board of managers, or which is offered to prove the necessity of cutting drains or underdraining the lands, so as to secure to the land owners the full benefit of the work that has been done by the commissioners, for which the assessment has been made.

*John F. Cummins, a witness.*

I am Isaac Cummins' son; I live near my father, in Warren county; I am married; I know Judge Boyd and Mr. Hoagland, the commissioners in this case.

Q. Did you have any conversation with Judge Boyd, one of the commissioners, in reference to the effect the drainage would have upon your father's land?

102 A. Yes, sir.

Q. When and where was it?

A. By my father's wagon-house, at the time those two commissioners were up looking over his land, examining it.

Q. Please to state now all the conversation that passed between you and Judge Boyd on the subject.

Objected to by Mr. Little.

A. Mr. Boyd sat in his carriage ready to go home; I came along where he was, and conversation concerning the drainage of the meadows commenced; he stated that he had been looking over the

ground, and he could not see how the Pequest drainage could benefit my father one cent's worth; that's all that was said about my father or his lands.

Q. Was anybody present beside you?

A. No.

Q. Where was Mr. Hoagland?

A. I believe he was getting up his horse, at least he was out to the barn.

Cross-examined by Mr. LITTLE:

Q. Are you sure no one was present beside yourself and Judge Boyd?

A. I did not notice any one being by.

Q. Could any one have been near enough to have heard the conversation, and you not have known it?

A. Probably they could.

Q. Where was your father during that conversation?

A. I could not say where he was.

Q. Hadn't you seen him that afternoon?

A. I believe that I noticed his being around.

Q. Had he, or not, gone to the barn with Mr. Hoagland to get his horse?

A. I do not know.

Q. Did you have any conversation with Judge Boyd on this subject, that afternoon, in the presence of your father?

103 A. I believe not.

Q. Didn't this conversation, which you have detailed here, occur in the presence of your father?

A. No, sir.

Q. Did you hear any conversation that afternoon between your father and Mr. Hoagland, in the presence of Judge Boyd?

A. Not that I remember.

Q. Are you sure that Mr. Hoagland wasn't present at this conversation which you have detailed?

A. Yes, sir.

Q. Did you ever communicate the conversation, which you say you had with Judge Boyd, to your father?

A. Yes, sir.

Q. When first?

A. Shortly afterwards.

Q. On the same day?

A. I think not.

Q. How long afterwards?

A. I couldn't say how long; I went home, to my own house.

Q. Did you ever, Mr. Cummins, communicate it to your father until you heard that they had assessed his lands?

A. Yes, sir; shortly after it occurred.

Q. What reply did your father make to you when you told him what Judge Boyd had said?

A. I think, if I remember right, he said he had told him some-

thing similar; I don't just remember the words; I had but the one conversation with Judge Boyd.

JOHN F CUMMINS.

Sworn and subscribed before me, this 19th day of December, A. D. 1879.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

104 *Silas Cummins.*

I reside about fifty yards from Isaac Cummins, in the county of Warren; I am his son; I am forty years old; I have lived where I now live all my days, excepting about five years of my youngest days; I have lands assessed by the commissioners—twenty-five acres; I am assessed eighteen dollars per acre, amounting to four hundred and fifty dollars and fifty cents; I am a farmer, and always have been.

Q. Were you acquainted with the value of the lands along the Great Meadows before the drainage commenced?

A. Yes.

Q. What was the fair market value of these lands assessed to you, before this drainage commenced?

A. Well, I think about fifteen dollars per acre would be a fair price.

Q. What is their fair market value now?

A. No more than it was at that time.

Q. Will these twenty-five acres sell in the market at the fair market value of them for the amount of this assessment?

A. I don't think they will bring any more, if they did as much.

Q. Is any portion of these twenty-five acres cultivated lands, if so, how much?

A. About ten acres

Q. How long have you had these ten acres under cultivation?

A. Part of it fifteen years, and the rest about ten.

Q. Are your lands assessed benefited by this drainage, or not?

A. I think not.

Q. You have lived on the lands all the time this drainage operation has been going on, have you, up to the present time? If so, state whether you have noticed or experienced any benefit to your lands, in question, by the drainage.

105 A. I have lived on them all the time; I have not noticed or experienced any benefit to my lands yet.

Being cross-examined, says:

My lands lie between my father's and Mrs. Wurts, and bound on the main ditch, or saw-mill stream.

SILAS CUMMINS.

Sworn and subscribed before me, this 19th day of December, A. D. 1879.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*Ephraim Simanton.*

I reside at Vienna, Warren county, New Jersey; I am a minister of the Gospel, designated, rather, as an Evangelist under the present circumstances—so designated in the minds of the church; formerly the pastor of the church at Danville, New Jersey; I am the owner of lands in the vicinity of Vienna; over a hundred acres—a hundred and some twenty odd acres; it lies on the Pequest; on the west and south side of the Pequest, according to the map, or, rather, in the bend of the Pequest.

Being shown map, "Exhibit D," on the part of Simanton and others, is asked:

Q. Please point out, on that map, your lands and their location as to the Pequest.

A. My land on the map is marked "E. Simanton's farm;" the red line, marked figures 1 and 2, shows the northwest boundary, and is the line between my lands and those of John Green and Simon A. Cummins; the wide blue crooked line shows the Pequest river, running around my land to the Vienna bridge; the public road leading from Danville to Vienna is the boundary line
106 from the bridge to Cummins' land; Cummins' land is not designated by his name on the map, but he now owns also the tract marked "John Green."

Q. Are any of your lands assessed for benefits by the commissioners of drainage?

A. They are.

Q. How many acres?

A. Fourteen and forty-five-hundredths acres.

Q. What is the amount of the assessment?

A. Four hundred and four dollars and sixty cents; twenty-eight dollars an acre.

Q. Are these lands assessed boggy, miry, wet land, or what is their character?

A. They are dry lands, except from the overflow of the Pequest river in time of a heavy and continued rain.

Q. Have you cultivated those lands, or are they lands to be cultivated? Describe them.

A. Part of them have been under cultivation, and still are; they have been, during a period, more or less, cultivated, of twenty years, since I have owned it; part is in with timber; some of it that was not in with timber was not cultivated; not all quite; most of it was.

Q. State how much of the land assessed for benefits, as you have stated, has been under cultivation for twenty years, and how much

has been and is in the woodland, and how much is not cultivated which is not woodland?

A. It is difficult to answer that question accurately, since those portions have not been surveyed by themselves; I can show you on the map; about two acres are, and have been cultivated, and about six acres are, or have been, in with timber; we have been cutting some off, before and since the drainage; the balance of the tracks assessed are uncultivated; there are three tracks assessed.

Q. Can you designate on that map those tracks which are assessed; if so, do so?

A. I can; they are not numbered; they are marked here; I have designated them on the map by the letters X, Y, and Z.

Witness being shown "Exhibit F," on the part of E. Simanton, is asked:

107 Q. Have you had possession of that paper until you delivlivered it into the hands of your counsel?

A. I have.

Q. Where did you get it?

A. That I am unable to say now.

Q. Do you know from whom you received it?

A. I do not.

Q. Do you know whether similar notes to that, or that notice, was put up in your neighborhood?

A. I do not remember, to the best of my knowledge; I preserved it for future use, as the notice of drainage published in the papers, but the particulars I am not able now to state; it was preserved with the impression that this was the authoritative notice given at the time.

Q. How long have you had it?

A. Well, I've had it ever since immediately previous to the drainage.

Q. Please to look at what is designated on that notice as the beginning corner, and state if you are acquainted with the locality, and with the objects called for, there at the beginning point?

A. I am acquainted with the locality; I am well acquainted with the church, where I preached for about fifteen years.

Q. Please to state, now, whether the lands assessed to you are above or below that boundary described in that notice, "Exhibit F;" and, if below, how far below?

A, Below; how far, I am not able to say accurately, because I have no measurement; I would suppose about a quarter of a mile, to the track marked X, assessed, and considerable farther to others marked Z and Y.

Q. Are these lands which are assessed for benefits against you actually benefited by this drainage?

A. That more fully remains to be seen.

Q. Is that all your answer?

A. Yes.

Q. How were these lands affected before the drainage, and how are they affected now; I mean the lands assessed.

108 A. Before the drainage they were subject to overflow by the Pequest river in times of heavy and continued rain; in times of heavy and continued rain they are partially subject to the same overflow, which is proved by the facts that early in the fall of 1878 the one tract marked Y was overflowed by the Pequest river as before the drainage, and early in the spring of 1879 these tracts were partially overflowed by the Pequest river when tract marked Y was overflowed, as before the drainage, if not more so, because of the greater concentration of water thereon from the upper drainage of the Great Meadows, and tract marked Z partly overflowed.

Q. If the tracts overflow, as you have described, since the drainage, how do you suppose it remains to be seen whether it will ever benefit you or not?

A. The difficulty before the drainage with these tracts was not that they were wet lands from springs or streams coming on to them, except from the overflow of the Pequest river, in times of high water, which, because of the uncertainty when those high waters came, rendered it unsafe to risk the expensive cultivation, in the way of manureing and limeing of those lands, and the same difficulty remains still, to a considerable extent, as already shown by the two overflows of 1878 and 1879; and further, the channel of the river appears to be filling up; there is not a sufficient outlet below me to keep off the overflow of the Pequest river in times of heavy rains.

Q. You have hardly answered yet how it remains to be seen whether this drainage can ever benefit your land assessed.

A. It remains to be seen whether in the future there will be storms sufficiently heavy and continued so as still to overflow these lands.

Q. Had you any conversation with Mr. Amos Hoagland about this overflow prior to the present assessment; if so, state it all, and when it was?

Objected to by Mr. Little.

A. I had; I remember distinctly of one conversation with him as to the tract marked Y, and called his attention to the fact of the insufficiency of the banks of the Pequest river to contain the
109 waters in times of long and heavy rains, so as not to overflow said tract, and which tract had been actually overflowed as much as before the drainage, if not more so; that's all; what I have given is the substance of what I said to him; I do not remember the exact words; this was before the last assessment; I am not able to say positively—that is my impression; it was since the first assessment.

Q. State what Mr. Hoagland said in reply to your remarks that you have given us, if he said anything.

A. I am not able to state his exact words, but his reply in substance was, that I was benefited, and ought to pay.

Q. Did you know Mr. Fagan, one of the contractors under the commissioners for clearing the Pequest; if so, what was his first name?

A. I knew him, and, as I have his name, it was Ansel.

Q. Did you ever get a drainage bond of him, issued by these commissioners; if so, what was the amount, and for what sum did he let you have it?

Objected to by Mr. Little, as entirely irrelevant.

A. I did, by agreement with himself, receive it from his wife; the amount of the bond was one hundred dollars; he let me have it for seventy dollars.

Q. When was it?

A. November 25, 1878.

Cross-examined:

Q. Where did Mr. Fagan reside at the time you knew him?

A. I never knew him till he came to the region of Great Meadows to do this work as a contractor.

Q. Was he a man of family?

A. Yes, sir.

Q. Did he have his family with him during his contract?

A. Part of the time.

Q. Do you know where he lives?

A. From authorities which I believe, he is himself in Mexico.

110 Q. When did he leave this region, so far as you know?

A. This last fall—this present fall.

Q. He remained here, then, after the termination of this contract till this fall, did he?

A. Partly; shortly after he went to Mexico, then returned to his home, in Vienna, and again this fall went to Mexico.

Q. Do you know in what business he has heretofore been engaged—what following—from your own knowledge or from information?

A. From his own conversation with me, as far as I remember, I learned that his business was taking contracts on public works.

Q. When, as near as you can tell, did his contract for this drainage terminate?

A. I am not able to tell.

Q. When did he first go to Mexico?

A. As before stated, from authority I believe I am not able to state the exact time, as far as I know, save when, in the spring of 1879, to the best of my knowledge.

Q. Who proposed to you to bring this drainage bond, if anybody?

A. Mr. Fagan himself.

Q. What was your object in buying it?

Objected to by Mr. Shipman, as irrelevant and not proving a fact.

A. The object was a complex one. He expected to owe me one hundred dollars for rent, and he made to me the proposition that, if I was willing, he would give me thirty dollars in money and a one-hundred-dollar drainage bond for the rent, and I considered the risk the safest.

Q. You knew, I presume, that the bond was payable only out of the assessment upon these lands?

A. Except that there might be a faint hope in the future of their being otherwise paid.

Q. Paid in what way, do you mean?

A. By the State.

Q. Has that subject been a matter of considerable conversation among the persons assessed?

Objected to by Mr. Shipman, as entirely irrelevant.

111 A. It has.

Q. Well, for how long a time has this been a matter of conversation?

Same objection.

A. From the inception of this business.

Q. The commissioners, in the process of their work, used some little portion of your land, did they not, Mr. Simanton?

A. One tract of $4\frac{99}{100}$ acres; one tract of $3\frac{43}{100}$ acres; and a third tract, $1\frac{35}{100}$ acres, I suppose. This last was occupied in cutting a new channel through a portion of tract Y.

Q. In cutting that channel through tract Y, did they not leave the old channel free from water?

A. No, sir; in the driest time that I have ever known since there has been water, and deep water, in part of that old channel. In times of heavy rain and high water the channel is all occupied with water from the Pequest creek; and in times of heavy and long-continued rain, as is usual of from two to three such rains in a year, the channel lands and all are completely under water.

Q. This map D, which you have been shown, was made, was it not, before the drainage?

A. No, sir; since the drainage.

Q. Do you understand it to show the course of the river since the drainage?

A. With one exception, it does; it does not show the new channel; it shows the old channel.

Q. Why didn't you cultivate more of this land which has been assessed than two acres before the drainage?

A. Because of the uncertainty of success on account of the overflow from the Pequest river.

Q. Why didn't you cut off the timber on that portion of the tract which you have spoken of before this drainage?

A. Because I did not desire to cut what was fit only for firewood any farther than we needed for own use; and other portions of this timber, to a considerable extent, is very valuable for
112 building and mechanical purposes. That I wished to remain, and do so still, as long as possible.

Q. You have been cutting some of it off since the draining, as I understand you?

A. Yes, sir; and before.

Q. Have you cleared any portion of it since the drainage?

A. Not entirely; with the exception of some building timber, and a few other scattering trees.

Q. Have you cleared any portion of it since the drainage sufficiently for cultivation?

A. I have.

Q. How much?

A. Have to guess at that; probably about three acres.

Q. How much have you cultivated of that land which has been assessed which you had not cultivated before the drainage, in all?

A. About six acres I would suppose.

Q. Is, or not, the remainder of the land assessed equally susceptible of cultivation with that which you say you have cultivated?

A. It is.

Q. What crops have you raised upon the land that you cultivated since the drainage?

A. Corn and wheat; this year I put potatoes on the part of the point cut off by the new channel.

Q. Were they good crops, or otherwise?

A. Otherwise.

Q. Poor crops?

A. Some crops, with a slight exception.

Q. What years were those crops raised?

A. The crop of wheat was this present harvest upon a portion of the land which the previous year was in with corn; and another portion of the land assessed was in this season with corn.

Q. What was the difficulty with the crops?

A. That is difficult to tell; I can give the facts; since the drainage, with the understanding that there would be no overflow, I manured a portion of the land and limed it, and sowed it with
113 wheat, after which were the two overflows spoken of before, which, in my opinion, must have been the cause, or had much to do with the failure of the crops.

Q. Was that caused by backwater—those overflows?

A. I think not, at least entirely, but chiefly from the overflow of the channel from above.

Q. How much of the land appraised did those overflows cover?

A. About four acres.

Q. How long did it continue on the land?

A. About a week, with the exception of the ice in the last overflow, and that remained in cakes of ice, heavy cakes of ice, for a long time.

Q. Was there, below you, in the river, anything like an ice gorge at that time, or was the river obstructed by ice which had lodged?

A. There was an opinion of that kind.

Q. Was it true, or not, so far as you know?

A. I think there was some truth in it.

Q. Were both of those overflows in the winter, or at the breaking up of the ice in the spring, or only one?

A. Only one; the last.

Q. At what season was the other?

A. Early in the fall, as far as I can recollect.

Q. How long did that continue upon the land?

A. About a week, as far as I can remember.

Q. Does the stream pass under the road at the boundary of your land?

A. It does, under the bridge.

Q. Was the channel widened at that point by the commissioners, or not?

A. They went through by hand and the dredge; I don't think the channel is as wide as it was before, but I suppose they gave it the usual width of the plan of drainage, as in other places.

Q. Did they, or not, add a new span to the bridge?

A. They did.

Q. And do not the two original arches remain there as they were before the drainage?

A. They do.

114 Q. Are there, or not, obstructions at that point across those arches tending to prevent th efree discharge of the water at that point in times of high water?

A. Some one did put in poles to prevent cattle from crossing.

Q. How many are there?

A. I don't know how many.

Q. Are there any other obstructions, except the poles, at that point?

A. None in the channel, and no poles in the channel.

Q. What do you mean by the channel?

A. The whole stream within its banks.

Q. Where, then, are these poles that you have spoken of to prevent cattle from crossing, if they are not across the channel?

A. Across the arches of the old channel.

Q. Were not those arches over the old channel left there by the commissioners for the water to flow through in time of high water, and does not the water flow through them in time of high water?

A. They were, and it does.

Q. Would, or not, the effect of closing those arches in whole or in part be in time of high water to throw the water back upon your land?

A. It might help, but it is not the chief cause.

Q. How long have those poles been across the stream at that point?

A. I am not able to say definitely.

Q. State as nearly as you can.

A. I should think about a year.

Q. By whom were they put there?

A. To the best of my knowledge they were put there by Mr. Hopler and Mr. Merrill.

Q. And who were they employed by?

A. By themselves, I suppose.

Q. They are on your side of the bridge, are they not?

A. What's left are.

Q. Have some been taken away then?

A. Before or about that high water I noticed some were gone.

115 Q. At what *p*aints of the channel does the channel of the river appear to be filling up, as you stated?

A. All along it as far as I have been; more in some places than others; I noticed several bars forming in the channel; I counted one above the Larrison bridge, where they took out the dredge, formed by the dredge lying there about one-fourth of the distance across the creek, and I judged about a foot above the surface when I was there; I counted two below the Larrison bridge on Mr. Simon A. Cummins' property, and two below that, on my property; and also at the Vienna bridge, at Vienna; I noticed the old channel where these poles are is rapidly filling up with sand; several feet of sand have already washed in above and below the bridge; and the lands immediately below the bridge by the two floods were overflowed; and I noticed in other places smaller bars all along the stream, as far as I examined it, are forming.

Q. Now, sir, tell, if you please, when this examination was made by you, in which you discovered these sand-bars?

A. Since this testimony has commenced.

Q. Was it before or since Friday of last week?

A. Since this testimony has commenced and before this last rain; but I don't remember.

Q. Can't you tell whether you made that examination this week or not?

A. I think not; it was not this week.

Q. You didn't make it on Sunday, did you?

A. No, sir.

Q. Was it on the Saturday previous or not?

A. It was the day before or the day after—I mean I left you here; it must have been on the fifth or sixth of December.

Q. The sand which you speak of at the bridge, immediately above and below it, was it within or outside of the channel cut by the commissioners?

A. Outside.

Q. How far down the stream did your examination extend at that time?

116 A. I can't tell the exact distance; I didn't measure it; a short distance below the bridge.

Q. Through whose lands?

A. Why, Mr. Merrill's.

Q. Did you go as far as the Danville bridge?

A. No, sir, I did not.

Q. Are there not, between the Vienna bridge and the Danville bridge, certain obstructions placed in the river by the adjoining land owners, for the purpose, I suppose, of keeping cattle from crossing?

A. I know of one which I see from the Vienna bridge.

Q. Do, or not, such obstructions tend, by resisting the flow of water, to produce sand bars?

A. No, sir; not obstructions of that kind.

Q. The bar near Larrison's bridge, was it above or below the bridge, and how far either way?

A. A short distance above the Larrison bridge, where the dredge was taken out.

Q. Was the water in the river, on the day you made the examination, very low, or not?

A. The water was low.

Q. Did the commissioners, or not, straighten the channel considerably through Simon Cummin's land?

A. I think they did.

Q. Is there any other gentleman of your name in the neighborhood of the Great Meadows?

A. Not that I know of.

Q. Do you know of any person by the name of Ephraim Simanton?

A. None beyond myself; sometimes I see my own name spelled that way.

Q. Is it not very commonly pronounced Simanson?

A. I don't know but what it is by persons not well acquainted with me, or the spelling of my name.

Q. When did you first learn that your lands were included in the previous assessment that was made?

A. When they came on to measure the land for the assessment.

117 Q. Has there been any agreement among these exceptants, as to how the expense of this controversy are to be paid?

A. No, sir, not that I know of.

Q. Did you file your exceptions at the request of any person, or or your own notion, merely?

A. Of my own notion, merely.

SATURDAY, A. M.

Q. Was there a boat sunk in the Pequest on your land since this drainage was completed?

A. There was.

Q. How long did it remain there?

A. That I can't tell; I know with great effort I got it out.

Q. Can't you tell whether it remained there one day, or one week, or a month?

A. It was this summer, and remained, I think, two or three weeks.

Q. What caused the difficulty in removing it?

A. The weight of the water in the boat, and, I might say also, for want of sufficient assistance.

Q. Was there anything in the boat except water?

A. There was a small portion of sand in the bottom of the boat.

Q. Any stones?

A. Yes, sir, there was a few stones in the boat.

Q. Do you know how they got in there?

A. No, sir, I do not.

Q. Whose boat was it?

A. I am unable to say; it was not mine.

Q. Did it lie crosswise or lengthwise of the stream?

A. Lengthwise, as far as I remember.

Q. How far out from the bank was it?

A. As far as I can judge, about one-eighth of the width of the channel or stream.

Q. Was it imbedded at all in the sand?

A. I think not.

Q. Then, if it had been there three weeks, it didn't have any effect in producing a sand bar?

118 A. I think somewhat; it had a tendency that way, and did somewhat, I think.

Q. Was "Exhibit F" that notice, left at your house by some one?

A. I have no remembrance whatever as to how I obtained possession of that notice.

Q. What crops had you upon this reclaimed land in 1878?

A. Corn, as far as I remember.

Q. You had a conversation, you say, with Mr. Hoagland. Did you or not say to him, in that conversation, or at any other time, that you were surpised to see how much benefit the drainage had been to your land, or anything to that effect?

A. I remember nothing of the kind.

Re-examined:

Q. State how these poles lie across the stream; how high above the water.

A. Crosswise, and so, as I saw, sufficiently high to permit the water to pass.

Q. What kind of poles were they, as to size and shape?

A. Not very large; and, as far as I remember, some of them round and some of them split.

Q. How many were there at the Vienna bridge?

A. I am not able to say.

Q. Where is the bridge which has been called in your cross-examination "Danville bridge"?

A. It is a bridge at a considerable distance, I should think probably a mile, or more, below the Vienna bridge, in the road leading from Danville to Barker's mill.

Q. That bridge, then, is, of course, far outside of the boundaries of the drainange?

A. It is.

Q. What kind of poles were those you saw below the Vienna bridge, which you mentioned yesterday, and how were they laid over the stream?

A. I don't know; never was there to examine it.

119 Q. Had these poles anything to do with the flood which spread over your lands in the fall of 1878 and spring of 1879, which you have described?

A. No, sir.

Q. This flood of 1878, how was that produced?

A. By the Pequest river overflowing its banks from above.

Q. Had this boat anything to do with it?

A. Not anything.

Q. State what kind of grain you have raised on these assessed

lands since this drainage. I mean as to the character and quality of the crops.

A. Of an inferior quality, with a small exception; the wheat was very thin on the ground, and, to a very large extent, mingled with what are called drips, and the corn was very thin on the ground in many places, with small and slender stalks, and scarcely any ears, and in a few places very good—the exception I spoke of; in places the potatoes were an entire failure, because of the soil being too wet.

Q. Had you manured and limed the wheat and corn ground that season?

A. I manured and limed the wheat ground heavily before putting it in with wheat.

Q. What was the cause of the failure of these crops?

A. I think the overflow.

Q. Had you ever put anything on these same lands before the drainage?

A. A portion of them.

Q. Was there any difference in the crops?

A. The crops were of a different kind.

Q. What were the crops?

A. Buckwheat, as far as I recollect now, and, I think, oats.

Q. Do you consider these lands now any more reliable for the production of crops than they were before this drainage?

A. Not those subject to overflow, and which have been overflowed.

Q. Do you regard any of the fourteen acres any more
120 reliable now than before the drainage? If so, how many acres of them?

A. A portion not cleared of about five acres, and a portion of the cleared, probably about three acres, I think is.

Q. Are they liable to be overflowed?

A. They have not been overflowed; they are more or less subject to wet in high water.

Q. In these overflows, state what effect they had upon the land below Vienna bridge; did they overflow them?

A. They did.

Q. Whose?

A. Mr. Merrill's and Mr. Andrew Cummins'.

Q. If the sand keeps accumulating in the stream, as you described it to have done, how long will it be, in your judgment, before the river will be obstructed so that it will overflow as much as ever?

A. I am not able to say; it appears to be rapidly forming bars and filling up.

Recross-examination:

Q. The potatoes which you planted were in this old channel, were they not?

A. No, sir.

Q. How near to that old channel were they?

A. I am not able to say; I have not a measurement; a short distance.

Q. How far above your lands did the Pequest overflow its banks, at the time you have referred to in 1878, speaking of your own knowledge?

A. I have no knowledge of any overflow above my lands at all.

Q. Either in 1878 or 1879?

A. No, I have no knowledge of any overflow of lands above mine.

Q. You say a portion of your land assessed has not been overflowed since the drainage, but is more or less subject to wet in times of high water; where does that wet come from?

121 A. Partly—that might be a matter of speculation—from soakage and from the Pequest, and it might be otherwise.

Q. What do you mean by "soakage"?

A. I am not able to say.

Q. What do you mean by "otherwise"?

A. From other lands in the vicinity, and from the Pequest.

Q. Do you or not mean from the water which ran from your other ground to this lower ground, and being prevented from draining off by the high water of the river?

A. Yes, that is what I mean.

Q. In your opinion, then, if the stream was kept full within its banks, or nearly so, yet not full enough to overflow the banks, would the water affect your adjacent lands by what you call soakage?

A. I think it would.

Q. Well, then, if the bed of the stream was lowered very considerably, would it or not, in your opinion, tend to decrease the damage from what you call soakage?

A. It would.

Q. At the point, or near the point where this boat was sunk, were there or not poles placed across the stream?

A. There were single poles across the stream, above the water, about forty or fifty feet apart, to keep cattle from crossing.

Q. How far above the surface of the water at ordinary time of water, are these poles placed?

A. I am not able to state definitely, having never measured, but I would suppose some two or three feet.

Q. How high are the banks of the stream above the surface of the water at an ordinary time of water?

A. I don't know.

Re-re-examination by Mr. SHIPMAN:

Q. Describe these poles, their size and form.

122 A. Long, small, round poles.

Q. When were they put there, and by whom?

A. I do not exactly know when—the exact time; but they were put there, or caused to be put there by myself, for the purpose stated.

Q. Do they interrupt or impede the free flow of the water in the Pequest river?

A. No.

EPHRAIM SIMANTON.

Sworn and subscribed before me, this 20th day of December, A. D. 1879.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*Wallace S. Ayers.*

I reside in Trenton, New Jersey; am a son of Mr. George H. Ayers; I formerly resided at Allamuchy, in Warren county, four years and a half ago, when I left Allamuchy for Trenton; prior to that, my residence was varied by the places where I attended college and schools; my occupation is that of civil and mechanical engineer; I have been such since the summer of 1872—the time of my graduation; I am now employed at the works of the New Jersey Steel and Iron Company—represented by Cooper, Hewitt & Co., New York; I have been in their employ four and a half years, about.

Q. Have you any personal knowledge of the Pequest river; if so, how long have you known it, and how near have you lived to it?

A. I have; I have known it from my early youth, and have lived within about a half a mile of the river.

Q. Are you acquainted with these lands known as the Great Meadow lands; if so, how long have you known them?

A. I have known them all my life.

123 Q. Have you noticed the Pequest river, or any part of it, and, if so, what part, since it has been cleaned by the commissioners?

A. I have examined portions of the river since.

Q. State what portions you have examined.

A. Nearly all of it above the long bridge in which operations have been done, and for, perhaps, two miles below the bridge, also at the two bridges near Vienna, for a short distance above and below each bridge.

Q. State what you observed on these different portions of the river in regard to the filling up of the channel with sand and other obstructions, and state particularly the parts of the river to which your observation was particularly directed on the subject in question.

A. The part which I particularly examined is that at the long bridge, as I have previously mentioned; above and below the bridge; I have noticed sand bars, three, I think, in number—one particularly, a large one, and cut off more than half of the width of the channel; this bar had caused the stream to dig into the opposite bank, and to cause the same to fall into the river, as well as portion of the material thrown out by the dredge, and the wear on the bank was evidently still going on; the other bars were, in general, producing the same effect on the bank; the nature of the soil in many places seems to be of a peculiar nature, which I will compare with water itself—that is to say, it has the nature of a fluid seeking a level when pressed down by an imposed weight, such as the banks themselves; this property of flowing, as a fluid, is, of course, not so sensitive to pressure as water itself, but is directly similar; in mines it is called the creep of the soil; I think there are plain evidences of this

creep in many places, tending to fill up the channel, and cannot be prevented in any inexpensive way.

Q. How is the stream at the point you have been speaking of, straight or tortuous?

A. Very crooked.

Q. What affect will be produced on the flow of the water in the Pequest at the point you have named?

124 A. It will increase the quantity of discharge to a certain degree, but not sufficient to carry off the rainfall on the adjacent lands.

Q. I meant particularly what effect will the obstructions, which you have been speaking of, eventually produced on the flow of the water in the Pequest?

A. They do now retard the flow of the water, and, I think, they will continue to increase in size and number, and must eventually bring the stream back to its original condition.

Q. Did you notice the banks of the stream, whether they were steep or otherwise?

A. From what I have observed of the operations by the dredge, the banks were left to form their own slope, and, in many places, they are still perpendicular, and in many others the subsoil seems to have oozed out, or flowed into the stream, and is still going on.

Q. Did you notice the character of the excavation made by the commissioners—I mean the dirt thrown out?

A. Do you mean the nature of the soil?

Mr. SHIPMAN: Yes, sir.

WITNESS: The greater portion of that which I have examined is largely mixed with sand.

Q. The commissioners, in their report, state that the total amount of excavated measured material, in the whole nine and three-quarter miles, in channel of the Pequest river, is 182,000 cubic yards, and a large amount of logs, stumps, and other drift not reducible to minerical contents; and they also state in their report that the measurement of excavation on the tributaries is 9,200 cubic yards of "earthly" material, together with a great quantity of obstructions removed not thus definable, which makes the total excavation, as reported by the commissioners, 191,200 cubic yards; the commissioners further report that for this excavation work, clearing and opening, they have incurred an expense amounting to the sum of $71,140.49; will you please to state, from your knowledge of the excavation, and from your knowledge as an engineer, whether the sum incurred is too high or not, and, if too high, how much; and state what, in your judgment, that work should have been done for?

125 Objected to by Mr. Little, as irrelevant.

A. I have made an estimate of what this work could have been done for, and find the figures given in the commissioners' report to be in excess of what I think the work could be done for. I think that the work for excavating and opening could have been

done for about, in round numbers, $41,000 less than reported by the commissioners; the work done in the main channel and in the tributaries, including the cost of clearing and opening and bridge expenses, could have been done for $32,528, made up of the following items: In the main channel the 182,000 cubic yards lifted by the dredge at $14.08 per cubic yard, amounting to $25,625.60; in the tributaries, 9,200 cubic yards, at 20 cents per cubic yard, $1,840; for transporting the dredge twice, $2,000; two men to cut trees, logs, brush, stumps, and so forth, ready for the dredge to lift out, employed constantly for three years, per eleven months, equal to 825 days, at $1.25 a day, $2,062.50; bridge expenses, $1,000; total, as above, $32,528.10. It also appears to me that the direction of the engineers and other work would have required services amounting to $1,500, made up of the following items: The services of two in supervising the running of the shore lines, two months, at five dollars per day each, $500; for the remaining two years and six months, say twenty-five months in all, one day per week, requiring the services of two, $1,000; total, as above, $1,500; differing from the report of the commissioners, $2,257.80. The totals of excess above my estimates are as follows: For excavation and work, clearing and opening, $38,612.39; supervising services, $2,257.80; grand total, $40,870.19.

Q. The last estimate, in reference to the supervisors' fees, as you term them, do you mean that calculation to stand in place of the commissioners' charge in their report of $3,757.80 for services already rendered?

A. That is the item referred to.

Q. Have you given us in your estimate the length of time which would be required to throw out these excavations and remove these obstructions?

126 A. Do you mean all the work of clearing, opening, and excavating?

Mr. SHIPMAN: Yes, sir; as embraced in my former question, based upon the report of the commissioners.

WITNESS: I think it fair to estimate that it would take three seasons. By that, I mean the months during which dredge operations could be carried on; this is owing to the fact that dredge operations cannot be carried on after the water is coated with thick ice, leaving the open months only for actual operations.

Q. In estimating the price of labor, have you given the price which labor at that time was worth?

A. My estimate has been made on the basis at which labor could be obtained for during these three years in which the work was done.

Q. State what years you include in this estimate, during which the work was done?

A. Eighteen hundred and seventy-six, eighteen hundred and seventy-seven, and eighteen hundred and seventy-eight.

Q. You saw this material; is it a material easy to be removed or otherwise?

A. The material, I think, should be classed with the hard clay,

or, in other words, material that is quite difficult to dig; and I have so considered all of it in my estimate; however, a large portion of the material was of a nature far more easy to dig than clay or hard material.

Q. In making this allowance of $1.08 per cubic yard for excavation, do you allow the contractor any profit in it; and, if so, how much?

A. I have allowed in my estimate twenty-five cent. for the contractor's profit and risk.

Q. Does your father own land in the neighborhood of the meadows?

A. He owns a part of the upper end of the meadows.

Q. Does the land which your father owns lie upon the Pequest or on Trout brook, as it's called?

A. Portions on each.

127 Q. Please to state whether the commissioners have cleared out the Pequest over any portion of your father's land, or cleared out Trout brook over any of his land.

A. Work was done on the Trout brook, to my knowledge, but on the Pequest, I do not know that anything was done; nor do I think anything was necessary to be done on the Pequest, except the removing of a fish dam, which still remains; nor was any work of any great amount necessary on the Trout brook.

Q. Has the Pequest been cleared out over lands of Jesse Adams, Moses Applegate, and Amos Wilson?

A. I do not know that anything has been done.

Q. Have you made maps for those several persons?

A. I have.

Cross-examined:

Q. How old are you, Mr. Ayers?

A. I am not thirty yet; I am between twenty-nine and thirty.

Q. Where did you study civil engineering?

A. Lafayette College.

Q. And when did you graduate there?

A. In the summer of seventy-two.

Q. What business did you engage in immediately after your graduation, if any, and where?

A. In surveying, in the District of Columbia, in the city of Washington.

Q. For how long a time were you employed there?

A. In the neighborhood of two months—perhaps three.

Q. In what particular work?

A. I had charge of the surveys.

Q. Surveys of what?

A. Of the streets, wagon roads, railroads, boundaries, and so forth.

Q. Were you employed as principal, or as agent under some one else?

A. I had charge of that portion of the work in the District and the city of Washington—sent there by a gentleman in Philadelphia, who remained and resided in Philadelphia.

Q. Who was he?

128 A. O. W. Gray.

Q. Why did you leave after three months?

A. The work was completed.

Q. What railroad did you have charge of there?

A. I did not have charge of any railroad, but made surveys of the railroads.

Q. What railroads?

A. The railroads then existing in the District, the names of which I have forgotten.

Q. How many of them were there?

A. That I do not remember.

Q. In what part of the District were they located?

A. The one that I had most to do with was located in, I think, if I remember correctly, the eastern portion of the District, having its depot or terminus near the east side of Pennsylvania avenue.

Q. At what point on Pennsylvania avenue?

A. I do not remember the name of the street.

Q. Where was its other terminus?

A. I think it ran to Baltimore.

Q. How many roads were there at that time running from the District of Columbia to Baltimore?

A. Including the one I have just mentioned, I think there were two.

Q. What were their names?

A. I do not recall their names.

Q. To whom did you charge your services rendered to the railroad you have just spoken of?

A. Mr. O. W. Gray.

Q. Were you hired by the day, or month, or year?

A. I think it was by the month.

Q. Who directed you as to the work to be done on that railroad?

A. Mr. Gray, of Philadelphia, gave me directions as to what he wanted, and I did the work.

Q. How could he direct you, if he remained in Philadelphia?

A. His presence was not necessary, and he directed me by letter.

Q. What did he direct you to do?

129 A. To accurately examine—to carefully examine, I should put it—the location of each road, railroad, street, and boundary, with reference to mapping it, and making such surveys as were necessary, to accurately represent the whole as a map.

Q. That's the service, then, which you rendered in Washington in your profession?

A. Yes, sir.

Q. What's Mr. O. W. Gray's business?

A. He is a civil and topographical engineer, and has published one of the finest atlases of the United States that is now in print, and contains the work done for him in Washington.

Q. When next were you employed in your profession of civil engineer?

A. With the Lehigh Valley Railroad Company.

Q. Where; in doing what?

A. At South Easton, in their locomotive shops, in designing locomotive machinery.

Q. Were you the principal in that work, or did you work under a superior?

A. My superior officer was the master mechanic.

Q. And how long did you remain there?

A. Until December, 1873.

Q. And where then did you go?

A. I came to Hackettstown, nominally making my residence in my father's house.

Q. For how long a time did you remain there at your father's house?

A. Until May, 1875.

Q. Engaged in what business during that time?

A. In making surveys of properties chiefly, and on the drainage work at the upper end of the meadows, under the direction of Mr. A. R. Day, the chief engineer of that work.

Q. And where then did you go?

A. I then went to Trenton, sir.

Q. Where did you get the measurements from which you made your calculations, as given in your principal examination?

130 A. The cubic yards of material excavated I obtained in person from the commissioners' report, filed in the office of the clerk of the supreme court at Trenton.

Q. When did you procure those amounts?

A. About four weeks ago.

Q. What portion of the work was done while you were employed upon it?

A. I do not understand what your question is intended to embrace.

Q. Was any portion of the work done by the commissioners performed while you were in the employment, as you state, of Mr. Day; and, if so, what?

A. The commissioners directed, the greater portion of the time, the position of the boundary-line; this is the work that they did.

Q. You were only employed in running the boundary-line, what is known, I suppose, as the exterior line of drainage; is that so?

A. I ran the boundary-lines, made the maps of that portion of the work, and made the calculations of how many acres of each property owner's land were included within the boundary.

Q. Was Mr. Robert L. Garrison associated with you in that work?

A. He had charge of the lower portion of the meadows, I believe, but was not associated with me in the upper portion.

Q. Then, do you mean to be understood that you made all the calculations of the number of acres in the different tracts, or only of a part of them?

A. I made all of that portion that I surveyed.

Q. When did you make your estimate of the amount for which the work could have been done?

A. Within the past month.

Q. At whose request?

A. It was made at the request of several persons.

Q. Is that all your answer?

A. It is.

Q. Are you unwilling to name the persons?

131 A. I think Mr. Van Buskirk said he would like to have me make an estimate; my father was one; those are some of the persons.

Q. Have you had any personal experience in the removal of earth and the doing of such work as these commissioners have done; and, if so, please state when and where?

A. I have not had any personal experience in the way of taking contracts for such work, but have been associated with such work, more or less; while I was connected with the Lehigh Valley Company I saw a good deal of earth excavation, and have examined dredging machines in operation on the Delaware and Raritan Canal, and at Hazleton, Pennsylvania; I've seen dredge work, I think, in other places.

Q. Do I understand you correctly that your estimate is simply for lifting the quantity, the number of cubic yards which you have mentioned, of earth, and depositing it on the bank?

A. No, sir; it is for the throwing back of the material, also, by hand.

Q. How much did you estimate per cubic yard for lifting the earth to the bank, and how much for throwing it back by hand?

A. For lifting by the dredge alone, eleven cents per cubic yard; and the proportionate amount for throwing back that part which was thrown back, three and eight one-hundredths cents per cubic yard, making the total of 14.08 cents.

Q. How did you ascertain the quantity which was thrown back, as you say, for which you allow the 3.08 cents per cubic yard?

A. By taking some observation of the banks as thrown out by the dredge, and as finished by the men who threw the dirt back.

Q. When were those observations taken?

A. At the time the dredge was working about half a mile below the long bridge, and at several times since after the men had thrown the material back.

Q. How many cubic yards did you allow for the earth so thrown back?

132 A. I have allowed one-fourth of the amount deposited on the bank; I haven't it in cubic yards, and I think that this is all that is necessary to move back with careful dredging.

Q. You looked at a memorandum a moment ago when you answered the question as to the price which you had allowed for throwing back the earth; will you allow me to see it?

A. The memorandum for throwing back the dirt.

Witness hands memorandum to Mr. Little.

Q. What do you mean in this memorandum by "loosening twenty-five yards per day at four cents"?

A. One man ought to loosen with a pick twenty-five yards in one day of hard, tight clay.

Q. And shoveling, you've got seventeen and two-tenths cubic yards per day?

A. Yes, that's right.

Q. What does the 5.81 refer to?

A. That is the cost of shovelling back one cubic yard of the earth after loosening.

Q. What then does the 9.81 represent?

A. That represents the net cost per cubic yard of loosening and throwing back the earth.

Q. And the 2.45, what does that represent?

A. That represents twenty-five per cent. profit for contractor.

Q. And what do the figures 12.26 on the memorandum represent?

A. The total cost per cubic yard of earth thrown back.

Q. Your estimate of wages was one dollar per day, was it not?

A. One dollar per day.

Q. Have you ever been over this work since it was completed by the commissioners?

A. I have, of a portion of it.

Q. What portion?

A. The portions mentioned before, lying above and below the long bridge, amounting to about two miles.

133 Q. Is that the only part?

A. I have examined some also at the Vienna bridges.

Q. When was that?

A. About three weeks ago.

Q. Was that the time that you saw the sand bars that you speak of, or obstructions?

A. It was.

Q. Was that the only time that you have seen them?

A. It was.

Q. Was the water high or low at that time?

A. I think a little below the average.

Q. Hasn't the season been an unusually dry one?

A. It has.

Q. Had there been rain just before you were there?

A. I think there had, three days before; I do not mean three days' rain.

Q. Were you living at your father's at the time the proposals were issued for this work by the commissioners?

A. My impression is that I was, for the early part of the work, but not for the larger and later contracts.

Q. Why did you not yourself submit proposals it was in your line, was it not?

Objected to by Mr. Shipman, as irrelevant.

A. I am not a contractor, and, beside that, if I were, it would require more capital to start with than I then had at my command.

Q. What do you mean by the Vienna bridges?

A. I mean the two under which the dredging operations were carried, commonly known as the steam mill bridge, or Larrison's bridge, and the Vienna bridge.

Re-examination.

Q. Now state, please, definitely, what part of the exterior boundary line you ran—where you began and weere you left off?

A. I ran all of that portion of the boundary line above the long bridge, beginning at a corner in Amos Wilson's and James Ayers' line, following up on the north side of the Trout brook, then
134 down on the south side of the Trout brook to the long bridge, crossing the creek and running up on the west side of the Pequest, then down on the east side of the same to the place of beginning.

Q. Do you recollect how long it took you to do it?

A. I cannot recall to my mind the exact number of days; about a week.

Q. Was either of the commissioners with you during that time; if so, which one?

A. Mr. Hoagland was with me a good portion of the time, and Mr. Boyd was there also a part of the time with Mr. Hoagland.

Q. You spoke of visiting the stream about four weeks ago and examining it; did that include your examination at and above long bridge, or did you visit that on a different occasion?

A. That above the bridge was examined at a different time.

Witness, being shown four maps, one marked "Exhibit G," on the part of Amos Wilson, one marked "Exhibit H," on the part of Moses Applegate, one marked "Exhibit I," on the part of George H. Ayres, and one marked "Exhibit K," on the part of Jesse Adams, is asked:

Q. Please describe those maps as briefly as possible.

A. "Exhibit G" shows Amos Wilson's land, the red lines being the boundaries as established by the commissioners; the larger stream is the Pequest river, the smaller one the Trout brook; on Trout brook, at Amos Wilson's lower line, the fall is ninety-eight-hundredths of a foot to the mouth of the Trout brook; at the upper line of Amos Wilson the stream has a fall of four and three-tenths feet; on the Pequest river, at Amos Wilson's upper line to the mouth of the Trout brook, is two and thirty-seven-hundredths feet; at the lower line it is one and eighty-seven-hundredths feet; the shaded parts of the map in green represent woods; the broken lines represent the boundary lines of the farm.

Exhibit H represents the land of Moses Applegate; the red
135 lines represent the boundaries of the drainage survey; the fall at Mr. Applegate's lower line to the mouth of the Trout brook is .59 feet; at its upper line the fall is 1.87 feet; the green marking represents woods; the broken lines represent the boundaries of his farm; the blue represents the Pequest river.

Exhibit I represents the land of George H. Ayres; the red lines represent the boundaries of the commissioners' survey; the broken dotted lines represent the boundaries of his farm; the green mark-

ing represents woods; the crooked blue representation on the right of his map represents the Trout brook; the fall from his lower line to the mouth of the same is 4.31 feet; the fall from his upper line to the mouth of the same is 8.5 feet; the large blue representation at the left is the Pequest river; the fall from his lower line on the Pequest is 2.37 feet to the mouth of the Trout brook; at his upper line on the Pequest the fall is 3.1 feet to the mouth of the Trout brook; the straighter blue line on the right represents a ditch running into Trout brook.

Exhibit K represents the land of Jesse Adams; the red lines are the boundaries established by the commissioners; the broken dotted line represents the boundaries of his farm; the green representation is for woods; the blue representation is the Pequest river; at his lower line the fall to the mouth of the Trout brook is 3.1 feet; at his upper line the fall to the mouth of the Trout brook is 8.27 feet.

Q. Those grades, how did you get them?

A. By taking the level of the stream with an instrument.

Q. Are they accurate?

A. I think they are.

Recross-examined.

Q. When did you take them?

A. About four weeks ago.

Q. Who assisted you?

A. My brother, Horace B. Ayres.

Q. When you ran the boundaries represented by those red lines for the commissioners, what was your object?

136 Objected to by Mr. Shipman, as irrelevant.

A. The red lines on the maps I made, were not re-run; I do not know that I fully understand your question.

Q. From what memorandum were these red lines placed on these maps?

A. From memoranda which I made at the time of the survey.

Q. What did the memoranda you then made describe or represent?

A. The boundaries which the commissioners established of what they considered the drainage land.

Q. What rule or guide did you understand them to be governed by in making that survey?

Objected to by Mr. Shipman, as irrelevant and no cross-examination.

A. I think it was where coarse grass began to appear, which I think was the chief guide.

Q. Do you know why they were governed by the line of the coarse grass?

Same objection.

A. I think that they thought it was the high-water mark at that time, in the low meadow land.

Q. Did you run the exterior line anywhere else than in the low meadow land?

A. I did run a line that was ten feet above the water in the Trout brook, at a distance from it of not more than three hundred yards.

Q. My desire is to know from you definitely what guided you in running that exterior line which you have marked on these maps; please tell me without equivocation or evasion.

Same objection.

A. I have not fully understood the point of your questions; I ran the line where the commissioners dictated.

Q. Now, I ask you again—what did you understand from them to be their guide in running those lines?

A. I cannot say fully what guided them, except so far as I have already stated—the appearance of coarse grass, which informa-
137 tion I collected in overhearing some of their discussions as to the place where the boundary should be run.

Q. Was one of the commissioners with you the whole time while you were running that line, or not?

A. No.

Q. In the absence of the commissioners, what was your guide?

A. The chief engineer, Mr. Day, then directed the work, or the place where the line should be run.

Q. Was he with you at all times when the commissioners were not?

A. I think he was at all times.

Q. What direction did he give you as to running the line?

Same objection.

A. He always went ahead and established the points to be run to.

Q. When there was no coarse grass, what marked that boundary line?

A. I do not know, but in several cases I am quite certain that they were guided by the springy appearance of the ground.

W. S. AYERS.

Sworn and subscribed before me, this 20th day of December, A. D. 1879.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*William I. Roe.*

I reside on my farm, near Vienna, Warren county; I am farming at present; practicing medicine a little; I should call myself a farmer; I have been a practicing physician for about thirty-five years.

By consent of counsel, the further taking of testimony is
138 adjourned until Thursday, January 8, 1880, at 10 o'clock a. m., at the Clarendon House, Hackettstown, N. J.

Parties and counsel, Messrs. Shipman and Little, met pursuant to adjournment, Thursday, January 8th, 1880, at 11.30 a. m., at Clarendon House, Hackettstown, New Jersey.

WILLIAM I. ROE, a witness, continued:

Q. How long have you lived on the farm?

A. About one year.

Q. How long have you been acquainted with the land known as the Great Meadow lands?

A. About 35 years.

Q. Have you lived near them all that time?

A. No, sir; I have lived at Vienna the past eight years, previous to last year; I have owned lands in them and visited them several times in the last fifteen years; that's about the time I have been acquainted; but during the last thirty-five years there has been no year but what I have been over some part of them two or three times a year.

Q. Have you visited there lately; and, if so, how lately?

A. I was over a little of them yesterday; but regularly over them right along for a year—a part of them, every day most; I lived right in the meadows, as it were; my farm consists of an island.

Q. The number of acres included in the report of the commissioners, subject to assessment for benefits, is about five thousand five hundred acres; will you state what, in your judgment, is the present value of those lands?

A. There are about two thousand five hundred acres, I should think—that land closely along the borders of the creek—that I would value at $25 per acre, including the timber; some of that two thousand five hundred acres would be worth more than that, and the balance less—so that I would consider it worth twenty-five dollars an acre; the three thousand acres balance is certainly not worth over five dollars per acre; if I wanted to buy the land, I
139 would not be willing to give more than five dollars per acre.

Q. These twenty-five hundred acres which you have spoken of, how much of the value you have given of them is made up of timber?

A. As to that I couldn't say positively; I haven't thought upon that matter; there is some quite a large proportion of that land that there is no timber on that I would put the twenty-five dollars per acre on; I couldn't give it so as to be satisfactory to myself.

Q. Then just state your estimate in lump of the present value of these five thousand five hundred acres?

A. Twenty-seven thousand five hundred dollars.

Q. The commissioners of drainage have assessed these 5,500 acres of land for benefits to the sum of $107,916.07; in your judgment, will those lands bring that sum in the market?

A. No, sir; under no circumstances; my own judgment would say that.

Q. Have you noticed how this work has been done by the commissioners?

A. I have.

Q. Has it been well or illy done?

A. I think it has been done at double the expense it ought to have been done.

Q. In what respect, please explain?

A. In the first place, I think the contract was given out entirely too high; I would have, if they would have agreed to pay me cash, I would have done the work for twenty thousand dollars less, or agreed to; the superintending of the work cost more than double what it should; my opinion is, there was a great deal of mismanagement in the early part of the work; in the first place, in taking out dams, they cost double the amount they should have cost.

Q. Have you ever had any conversation with Judge Boyd, one of the commissioners, upon the subject of the expense of the work, the manner of doing it, and the cost of superintending it? If so, state it, and all that passed between you and him upon the subject.

Objected to by Mr. Little, that any conversation between
140 Judge Boyd and the witness, except so far as relates to Judge Boyd's whole action, and not to the action of his co-commissioners.

A. I have had several conversations with Judge Boyd; Judge Boyd said he thought there was entirely too much running; he didn't see the use of it, for his part; he couldn't see it, and that it was costing entirely too much money; and he said that he should resign; I advised him not to, saying that perhaps there might be and would be another commission appointed that would make the work more expensive than he; I then asked him about the expense—what it was costing—what it would cost, about; he never was able to tell me, nor never did.

Q. You use the expression that Judge Boyd said he thought there was "entirely too much running;" what was his meaning in using that expression?

Objected to by Mr. Little, as incompetent.

A. He said in plain words that he didn't see any reason why Mr. Hoagland should be going so much.

Q. In your former answer you used the expression: "The superintending of the work, I think, cost more than double what it should." State what you mean by the expression "superintending."

A. Superintending would be overseeing; but as the work was by contract, I never thought it was necessary to go half as often as they did.

Q. As who did?

A. Mr. Hoagland.

Q. Did you notice how frequently Mr. Hoagland did go while the work was in progress?

A. I couldn't say the number of times each week, but I never believed it necessary to spend more than one day of each week.

Q. Did you have any conversation with Mr. Hoagland himself upon the subject of the expense of the work?

A. I had two or three conversations with him in regard to that.

Q. Did you make any offer to Mr. Hoagland to superintend and do any part of the work free of charge; if so, what was it—I speak in reference to the ditch?

141 A. There is a ditch running from my crossway towards the Crane Iron Company's lands; Mr. Hoagland asked me what I would dig that ditch for per rod; I told him I would dig it for one dollar per rod, in money; he didn't want to give me the dollars; he said they had no money, but he would like me to dig the ditch for seventy cents per rod, and let it go on my assessment; I said to him that I was willing to hire the hands as low as I could, and I would oversee it for nothing, but he should pay the hands, or that he might hire the hands and I would oversee it for nothing, if he wished me to; he didn't tell me to see to it; it was put out by some of the commissioners.

Q. Who did the work?

A. I think John Dempsey done most of the work; I don't know positively that he done all the work.

Q. Did he do it by contract, or how did he do it?

A. I don't know.

Q. Who superintended that work?

A. I didn't see any of the commissioners there; I couldn't say as to that.

Q. Who were the contractors that did the most of the drainage?

A. Stephens and Fagan; there were others, I think, that belonged to the company, although I don't know their names.

Q. When was this conversation with Mr. Hoagland, when he told you that they had no money?

A. 'Twas in the spring of '78; I think it was after Henry Vreeland came there; I can't be positive until I think of some date—in '78, I think.

Q. When was the conversation with Judge Boyd, when he said it was costing entirely too much money?

A. In seventy-eight.

Q. What time in '78, please?

A. During the summer of '78; I couldn't specify even the month.

Q. State if you said anything to Mr. Hoagland about the cost of the drainage, or if he said anything to you any further than you have already stated.

A. He said that he couldn't tell the positive cost—what it
142 would positively cost, but that he didn't think it would cost what the lands were assessed at; that there was some litigation; he didn't know how much there would be, and how much the cost would be.

Q. When did he tell you this?

A. During the summer of '78; and I think we had a conversation in '79; we have had about two conversations about the matter.

Q. What time in 1879 was your conversation on this subject?

A. We had one conversation probably about two months since; I can't give the exact date, or, perhaps, anything near it, of the other conversation—the one last summer or the one the summer before that.

Q. Do you know, of your personal knowledge, whether the commissioners disposed of the bonds to the contractors? If so, state what you know about it.

A. I do not know.

Q. Did either of the commissioners tell you about it?

A. No, sir.

Q. Did you get any bonds of either of the contractors; if so, of which one of them, how many did you get, and what price did you pay for them?

Objected to by Mr. Little, as incompetent.

A. I got one one hundred dollar bond of Mr. Fagan, and allowed him eighty cents on the dollar on his account, about the year '78; I have forgotten the exact time.

Q. Are you acquainted with the lands of the late Mrs. Mary V. Wurts assessed for benefits?

A. Yes, sir.

Q. Six hundred and seventy-four acres and eighty-eight one-hundredths of an acre of these lands are assessed for benefits for the sum of thirteen thousand three hundred sixty-six and eighty-one one-hundredths dollars; will you please to state, in your judgment, whether those lands are worth that sum of money?

A. I don't think the lands are worth that.

Q. Will they bring that sum in the market?

A. I don't think they would.

Q. What would they bring in the market, according to your judgment?

143 A. I would think probably there is a hundred acres or more of the best timber would probably bring forty dollars per acre; there is some pretty good timber on that tract; the balance, if I wanted to buy, I wouldn't be willing to give ten; the land that has no timber on it (I don't know the exact number of acres) I wouldn't wish to have it at ten dollars per acre.

Q. Where does this timber land lie; how near the Pequest?

A. I think on both sides of the Pequest; I think it run across it.

Q. Have you ever examined the quality of this land of the late Mrs. Wurts assessed for benefits, as to the character of its soil?

A. I have.

Q. State what it is.

A. The large proportion of it is deep muck land.

Q. Good for anything for tilling purposes and without heavy outlay to change the character of the soil?

A. I would say, in regard to that, that I think it is like all of the deep muck land in the Great Meadows, where there is little or no timber, without a heavy outlay, worth very little for tilling purposes, and I think the outlay would have to be very heavy if it's ever worth much.

Q. Can you give an idea of how much an acre?

A. That would depend upon the distance from the Pequest; to take the whole tract of the Wurts place, I don't think that it could

be bogged and ditched for any less than twenty dollars per acre, and then, I think, they would have a poor piece of land.

Q. Will the drainage of the Pequest be of any practical benefit to any land owners on it, unless such owners make large outlays in ditching?

A. Those near the Pequest it will be, without much ditching, an advantage; I think with ditching it will be a benefit to all—probably twenty-five per cent. its cost; those near the Pequest the benefits derived will be equal to their assessment; those within forty rods of the Pequest, or, perhaps, fifty rods—these remarks are made from having travelled over seven miles along the banks of
144 the Pequest, and watched its effects, and at different seasons of the year, in dry and in wet times.

Q. Then, beyond this limit that you have named, of forty or fifty rods, you consider it of no benefit, do I understand you? If not, please to state your understanding.

A. I mean to say that it is of benefit, but in most places proportionably less, as to distance from the Pequest. There a few exceptions to that rule. There are certain portions that I passed over, of a hundred acres, perhaps, within forty rods of the Pequest, that I couldn't see was any drier than before the dredge was put in the stream. I would say this, if it would be in order, that by taking the bar out at Bulgin or Larrison bridge of five and a half feet benefited to a certain extent the whole meadows—at least, that is my view of it—with ditching. We have got to ditch, or it will not benefit any of them a penny. I think eight-tenths of the land would have to be ditched, and well ditched.

Q. Do you know how far these lands of Mrs. Wurts extend on both sides of the Pequest that are assessed?

A. You mean to say the low land?

Q. Yes.

A. I think they extend from shore to shore.

Cross-examined by Mr. LITTLE:

Q. How long have you known Amos Hoagland?

A. About thirty years.

Q. About how old a man is he?

A. I would suppose about seventy years of age.

Q. What has been his business all his life?

A. Farming, I believe; agriculture; that is, the thirty years of his life.

Q. What has been his standing as to integrity in this county of Warren, where he is known?

Objected to by Mr. Shipman, as irrelevant.

Q. Up to the time of his receiving his appointment of commissioner I thought a good deal of Mr. Hoagland; I believe it was very generally good.

145 Q. Does simply this appointment as commissioner change the opinion of the people as to integrity of his character?

Same objection.

A. No, sir; not as far as I have heard it expressed.

Q. At the time these commissioners were appointed, was there or not, so far as you know, a general satisfaction with the selection as made by the court?

Same objection.

A. I heard of no objection.

Q. Did you hear anything said upon the subject?

A. Not particularly.

Q. Do you know who nominated them?

A. No, sir.

Q. Do you know who initiated this drainage movement?

A. I do not know all the parties.

Q. Name those whom you do know.

A. I think Aaron Van Buskirk and Andrew J. Cummins told me they signed it. I have never seen the name of one who signed it.

Q. Anybody else?

A. No, sir; I don't recollect of anybody.

Q. You speak of Mr. Hoagland's reputation for integrity never having been questioned, to your knowledge, till during this drainage proceeding; state, if you please, in what respect it has been questioned since, and by whom.

Objected to, as before.

A. I think that by probably one-half of the male portion of the inhabitants, grown up, from Mr. Hoagland's residence to the long bridge.

Q. When did you first hear that?

A. It began to be talked very generally the second year of the drainage.

Q. Was it or not confined to persons interested in the drainage?

A. It was not.

Q. Was it with reference to the drainage?

A. Yes, sir.

Q. What was the complaint?

A. That Mr. Hoagland was putting in or working a great deal of uneccessary time, personally.

146 Q. Did he or not, as a matter of fact, give personally much more time to the supervision of this work than either of the other commissioners?

A. He did.

Q. Do you or not, yourself, consider the position which was assigned to these commissioners a very responsible one?

A. I do.

Q. You so considered it at the time of their appointment?

A. I did.

Q. Doctor, who do you think, under such circumstances of responsibility, ought to be the best judge of the time which a faithful discharge of the trust required on the part of the commissioners, yourself or the commissioners?

Objected to, as irrelevant, by Mr. Shipman.

A. I would answer that in this way, that the five dollars a day might sometimes have quite an influence, where, as we who look on and pay the five dollars a day, think we are about as good judges, being there every day, as the man who gets the five dollars.

Q. As a physician, you have very serious responsibility in the treatment of your patients, according to your own judgment, have you not?

A. I have; I would answer that a little further; I have always been very careful to not make any unnecessary visits.

Q. Well, Doctor, who do you think would be the best judge how that responsibility should be discharged, yourself, your patient, or the outside public?

Same objection.

A. Myself.

Q. Have you been in the habit, in past years, of travelling over this great tract known as the Great Meadows?

A. I have for the past seven years passed over very frequently a very large portion of it.

Q. Did you pass over, then, by the road or through different parts of the land?

A. Generally through the land, on foot.

147 Q. For what purpose?

A. My practice lies on both sides of the meadows; I very frequently go up the creek and cross the meadows on foot, the distance being so much less, and as often as once a month, looking after my cattle; I had a large lot of cattle running in the meadows.

Q. On foot or on horseback.

A. Always on foot.

Q. How did you cross the Pequest?

A. There are, between the long bridge and the Larrison bridge, two places that I have found where there are trees across the creek, and I have gone across on the trees; one near the Post farm, and the other near the Howell farm, are the two that I generally crossed.

Q. In crossing at the Post farm, who did you go to visit?

A. I went to see Louis Heber at one time; to see him about my cattle; at another time Alfred Henry; at another time Joseph Unangst's wife, on a visit; I used frequently to cross from Unangst's to John Roe's, and I crossed on the dredge twice; I have crossed perhaps a half dozen times at the Post farm; likely much oftener; I don't know that I did go to see any others, except as hunting the cattle; it is probably twelve times a season the past three seasons I have crossed to look for the cattle; I live now on the west side of the creek; previous to the year at Vienna on east side.

Q. How far were you in the habit of going afoot from the river, in looking for your cattle?

A. I generally would go up the creek bank, and if I didn't find my cattle, would come back through the centre of the swamp, or nearly, then go up the west border of the timber of the swamp as far as the Howell farm, then come down the road by Jacob Hill's, Robert Garrison's, and so home.

Q. How far did you say the timber extended from the river on each side?

A. In some places it is perhaps from a half or three-fourths of a mile, and in other places not over a quarter of a mile, and
148 some places none; these distances I have simply guessed at; I may be a good deal out of the way.

Q. And what is the distance, about, from the highland on one side to the highland on the other side?

A. I couldn't positively say, but I should think the average width from the long bridge to Danville, the width would be, probably, a mile and a half in a straight direction; I may be a good deal out of the way; Mr. Day can answer that question better than I can.

Q. Have you intended, by your answers, to convey the impression that you have been in the habit of wandering over the tract known as the Great Meadows, at will?

Same objection.

A. Never, unless I had business—very seldom; I was loooking after the dredge pretty often.

Q. Before the draining, was there no difficulty in traversing that land on foot?

A. There was.

Q. On what account?

A. There were some places that was very wet.

Q. Were there many such places, or only a few?

A. There were large tracts of it very wet to travel on foot.

Q. Travel better on horse than on foot?

A. Couldn't travel on horse; you had to travel on foot if you traveled much.

Q. When you were in the habit of traveling on foot, did you, or not, confine yourself mainly to banks of the stream, and the banks of such ditches as had been previously dug?

A. As a general thing, I did, and would have to do it yet; very wet, very wet; this last summer I got over the top of my boots; and a man can't cross anywhere; there is no place off the banks of the ditches from my island to the hard land on the wet side of the meadows, if not frozen in a direct line, without getting into the water one foot deep; that's the surface, I mean on the surface.

Q. Were you living near the Great Meadows when the contracts were put out by the commissioners?

A. I was.

149 Q. Did you ever see those contracts?

A. No, sir.

Q. Did you see the proposals advertised by the commissioners?

A. I think I did.

Q. Did you ask the commissioners if they would pay you cash if you took the contract?

A. No, sir.

Q. Did you put in any proposals for a contract?

A. The first contract, taking the bar out at Bulgin's bridge, Edwin

Bulgin and myself did hand in a proposal, but it was said to be one or two days too late, and, I presume, was after the advertised time.

Q. Was that proposal based on your being paid in cash, or not, for your labor?

A. It was.

Q. Was not the advertisement of the commissioners for proposals which you saw for doing the work, based on cash payment, according to the advertisement?

(Objected to by Mr. Shipman, because it gives the contents of the paper without producing it.

A. There was nothing said, I think, as to cash, or bonds, in the advertisement; I supposed it to be cash; Mr. Bulgin said bonds.

Q. Now, if you understood from the advertisement for the proposals for doing this work, as you say, that it was to be paid for in cash, what did you mean when, in your principal examination, you said if they would have agreed to pay cash, I would have done the work for twenty thousand dollars less, or agreed to?

A. I will explain the matter; Mr. Bulgin and I threw in a proposal on the first contract that I think was about five or six thousand dollars lower than what it was done for, but it was too late, Mr. Bulgin said Mr. Hoagland said he had agreed to wait until that day, but when we handed it in he said that the contract had been put out a day or two previous. Now, in relation to the contract from the long bridge, or thereabouts, Mr. Bulgin, (Edwin Bulgin), myself, C. H. Albertson, Esq., talked that matter over, and we were willing to take the contract for a good deal less, if it would be money; but there was nothing but bonds talked of, because I believed it was to be bonds; I say it now that I would have taken the whole for twenty thousand dollars less, and would have said it then; I would have liked to have the contract for twenty thousand dollars less in cash.

Q. Did either one of the commissioners ever tell you that this work was to be paid for in bonds? If so, which of them, and when?

A. I don't know that any of them ever told me so at any time.

Q. Had you ever had any experience in that kind of work?

A. No, sir; only—do you mean on the first contract? Not on the first contract, I had not.

Q. What do you mean by the first contract?

A. The Bulgin or Larrison bridge contract—taking that bar out.

Q. On what part of the work done by these commissioners, if any, have you had any practical experience?

A. I never had any experience in the water, but when I see the dredge work on the first contract, I believed then that the work could be done for half the money that it was contracted to be done for, and I believe so now.

Q. Do you know what the words "practical experience" mean?

A. I do.

Q. Will you be kind enough, then, to answer the question put to you, which was: On what part of the work done by these commissioners, if any, have you ever had any practical experience?

A. The dredge part I never had any experience with, clearing the banks and ditching by hand I have had some experience.

Q. Had you ever seen dredge work before that time?

A. No, sir.

Q. Did you know that a dredge would be necessary to do the work?

151 A. I would say that I had seen a dredge work, on a small scale, in the Morris canal here; I forgot about that when I answered the other question; I did, and made my calculations upon the basis of doing the work with a dredge.

Q. From whom did you get your information about the working of a dredge?

A. From some men employed on the dredge here, I don't know what their names were, at Hackettstown, here on the canal.

Q. When was this working the dredge in the canal?

A. I think about a year previous to the dredge being brought up with us; I think it was about a year.

Q. Was that the only information you had as to the working of a dredge?

A. No, sir; this time I am now about to speak of, was when the dredge was working at Bulgin bridge; I went to Washington, Warren county, to see their small dredge work, and did see it work; I enquired of them about what amount of earth they could raise a day (of the engineer); also what would be the expense of a dredge; then, further, I went to see the engineer of the dredge at Bulgin bridge, in the Pequest, George Youmans; had several conversations as to the amount of earth they could throw out—as to the number of cubic yards, what would be the expense, and what the cost of their dredge; these were the grounds upon which I based my calculations, then adding thirty per cent. for profit and risk.

Q. Based what calculations?

A. What I could take the upper contract for, from the long bridge to where they had left off.

Q. And was that the work for which you put in the ——?

A. No, sir.

Q. Why did you not put in a proposal for this work?

A. Simply this, that I went to see Mr. Bulgin. Esquire Albertson consulted with my uncle, who was to take charge of the dredge, if we took a contract, and believed there was not one dollar to be paid, except in bonds, and don't believe there was to the contractors.

Q. Where were these dams taken out, that you speak of, at this large expense?

152 A. They were below and near Vienna.

Q. Who was the contractor?

A. The Creagers were the contractors; they took out one; I don't know who took out the others.

Q. Was that the work for which you and Bulgin put in your proposals?

A. Those dams? No, sir.

Q. Did you not see advertisements for proposals for that work?

A. I did.

Q. Was not that advertisement for proposals on a cash basis?

A. I presume they were; it was on a cash basis.

Q. Did you ever see any advertisement for proposals for doing any portion of this work that did not state that the work was to be paid for in cash?

Objected to, this and previous question, by Mr. Shipman, as giving contents without producing the original.

A. I don't think it stated anything about it, how it was to be paid for.

Q. The conversation you stated you had with Judge Boyd, when was it, and where was it?

A. The first conversation was in the year '78, in the summer of '78 or '77; it was while I lived in Vienna; it was near my barn in Vienna; the Judge came there, he said, to talk with me; it was in '78.

Q. What else did Judge Boyd say to you in that conversation, if anything, than what you have already stated?

A. I don't recollect of anything else of any consequence particularly.

Q. Was any one else present but you and the Judge?

A. I think not.

Q. And so far as you know, had the Judge no other object in coming to your place at that time, and to tell you that he thought the work was costing too much, and that he intended to resign?

A. I think he had no other reason.

Q. Are you sure that he mentioned Mr. Hoagland's name at that time, and said he didn't see any reason why Mr. Hoagland should be going so much?

153 A. Yes, sir; I am sure.

Q. Did he state to you at that time how much the expense was likely to be?

A. No, sir.

Q. Did you ask him?

A. I don't know that I did at that time.

Q. Didn't you ask him at that time about what it was going to cost?

A. I may have, but don't recollect that I did.

Q. Didn't he tell you at that time that he didn't know himself how much it was going to cost?

A. I don't remember distinctly; he had told me several times, but whether he told me at that time, I don't distinctly remember.

Q. Did it strike you as at all strange that Judge Boyd should come to your place and complain to you of the conduct of one of his co-commissioners?

A. Not after what Judge and I had talked at other times; no, sir; it did not; now, if I can answer, I would like to say a little more, and that is this: I believed Judge Boyd the whole time was very conscientious, and that he regretted that it was costing so much money, and I believe it yet.

Q. Did he ever complain to you of Mr. Hoagland spending too much time on the work, except the once?

A. Yes, sir.

Q. How often?

A. Quite a number of times.

Q. If Judge Boyd himself was not there on the work, can you tell how he knew how much time Mr. Hoagland was spending on it?

A. He told me the number of days each had spent.

Q. Did you complain to him of the time that Mr. Hoagland was spending on the work?

A. Yes, sir.

Q. How often?

A. A number of times.

Q. Did he ever volunteer himself to complain of Mr. Hoagland of spending too much time?

A. I can't say definitely.

154 Q. Did Judge Boyd ever say anything to you about resigning on account of his health?

A. I don't know that he did; he said that he was an old man frequently.

Q. When he spoke to you of resigning did he, or not, put it upon the ground of his age, and not upon the expense of the work?

A. He did not upon the ground of his age or his health; he showed some feeling.

Q. When this system of drainage was undertaken, did you understand that it was to drain all the Great Meadows into the Pequest without cross ditches?

Objected to by Mr. Shipman.

A. No, sir.

Q. Is there any material difference in the quality of the land embraced within what is called the drainage limits?

A. Yes, sir.

Q. Is the land joining the river higher or lower than that farther from the river?

A. In some places; there are a few places where the land is higher, but a very little higher; it appears to be drier nearer the river, or Pequest.

Q. You said you had travelled over some seven miles along the banks of the Pequest, and your judgment was that the land within some forty or fifty rods of the river was much more benefited than that further away; how did that benefit show itself?

A. Now, in order to answer that question, I shall have to do so at some little length; from comparing the land now and from before the dredge was put in the stream, for about the distance I have stated, in most places the land is drier, and, as a rule, I would think the land within the distance specified, of the Pequest, in most places, to be benefited every dollar it is assessed; benefited by making it drier.

Q. When you say that Mrs. Wurts' land extends on both sides of the Pequest, from shore to shore, please explain what you mean?

A. It's from highland to highland.

155 Q. What was the direct effect of lowering the stream at Bulgin's bridge five and one-half feet?

A. Why, to give an outlet to the whole meadows; I regard it a very necessary outlet; has a tendency to dry it.

Q. Would you naturally expect to see the effect of that lowering of the bed of the stream within one year or two years upon the whole body of land drained by the Pequest?

A. Not upon the whole in one year; in two I think it ought to be seen; it's a mere matter of opinion; I want that understood.

Q. At the time you and Bulgin put in your proposal, in 1874, had you, or not, heard of what this work was estimated by Mr. A. R. Day would cost?

A. At the time we put in our proposal I think I had not; I won't be too positive in regard to that.

Redirect by Mr. SHIPMAN:

Q. From what source did you get the impression that the work was to be paid for in bonds?

Objected to by Mr. Little.

A. Mr. Bulgin told me so.

Q. In your judgment are all the benefits resulting from the drainage on these lands now manifest?

Same objection.

A. I don't think it is; I don't think it had time, hardly.

Q. Do you know when they took the dredge out; if so, when did they do it?

A. I think it was not very far from the first of May; it was this last spring, at all events.

Q. When did they quit working it?

A. It's probably about a year from this time; I don't remember the exact date.

WM. I. ROE.

Sworn and subscribed before me this 8th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

156 *George H. Ayers.*

I reside near the village of Allamuchy, in the township of Allamuchy; I am acquainted with the land known as the Great Meadow lands to a considerable extent; my occupation is, and has been for a number of years, that of a farmer; I have been a farmer for myself since 1854; I was brought up on a farm; my age is sixty years; I have known of these Great Meadow lands to some extent since childhood; I was raised on a farm partly included by this drainage assessment.

Q. Have the commissioners assessed any portion of your lands, sir, for benefits; if so, how many acres?

A. They have; I think, seventy-eight, or about that.

Q. Please to state the amount for which these lands are assessed.

A. I am not positive as to the exact figures; I think about $300.

Q. Where are these lands situated?

A. About a mile above the junction of the Trout brook and Pequest; that is the centre of the property; the Pequest forming a part of the western boundary, and the Trout brook running through the property.

Q. Have you a map?

A. Yes, sir; but I did not bring it with me to-day; you have a note of it in my son's evidence; it was marked as an exhibit in this case.

Q. Does that map correctly describe the location of your land in reference to the Trout brook and the Pequest?

A. It does.

Q. State whether your lands assessed have been affected in any way beneficially by the drainage done by the commissioners.

A. They have not.

Q. Can they be beneficially affected by the drainage of the commissioners?

A. Please to let me ask a question for light on the question you ask: Do you mean on what they have already done?

157 Mr. SHIPMAN: Of course; that's what I mean.

WITNESS: No, sir; not by what they done, according to the explanation of the question.

Q. State why they have not been, and cannot be, by the drainage thus far done by the commissioners?

A. As far as clearing the stream of obstructions is concerned, I have done that, and kept it done for over twenty years; occasionally there would obstructions fall in the stream, and when I found leisure and convenience I would take it out and clear the stream; at the time the commissioners came to do that work along the streams there was nothing in them of any consequence for them to remove, and the dredging was done at so great a distance below us as not to shed any beneficial effect on our property.

Q. How far below you did they cease to dredge or clean the Pequest creek or river?

A. It's nearly a mile by way of the stream that they stopped dredging, or, rather, that is where they began to dredge under their last contract, and they dredged down stream; there was some brush cut from along the banks of the Trout brook, and some obstructions taken out on other property than my own; I think there was some work done on the Pequest inside of the mile I mentioned, but I don't know what, as I did not witness it; the streams, both Pequest and Trout brook, through my own property, and that of Amos Wilson, also of Moses Applegate and my brother James, have been kept clear for the time before stated, that is, to the best of my knowledge; I helped to do that work on Moses Applegate's in 1852, I think it

was, (that property then belonged to my father), and Amos Wilson had done his before that, and kept it clear ever since, except occasionally that a tree might be in it for a short time; that is the case with all those properties that I have mentioned; the depth and width of the channels have not been altered, and the lands on either side of the streams are as liable to overflow now as they were before the commissioners done any work.

Q. Has your lands been overflowed since the commission-
158 ers ceased their work on the Pequest as much as formerly; if so, state when they last overflowed, and on what occasions.

A. I think they overflowed the same as they did before, at any time when there is a freshet or heavy rainfalls; that on the Trout brook is more liable to overflow; the lands on the Pequest were overflowed last fall and last spring the same as previously; that on the Trout brook is more liable to overflow, and has been overflowed two or three times this fall, with the light rains we have had.

Q. Do you know when the commissioners ceased the work of drainage on Trout brook and on the Pequest creek?

A. I think there's been nothing done above where the dredging was done since the summer of seventy-five or seventy-six; but the dredging of the Pequest, I believe, was finished about a year ago from now, or some time during this winter; I don't know the exact time that they did get through.

Q. Your son, in his examination, spoke about a fish dam being on the Pequest creek; where is that?

A. It's at the upper end of where the Pequest forms the boundary-line between Nelson Gibbs and myself, in the Pequest between us; one wing runs to his shore and one to mine.

Q. How long has that been there?

A. I don't know; it was there when I bought the property in 1870; it had evidently been there a long time before.

Q. Did the commissioners clear this out?

A. No, sir; when I cleared out that part of the creek, I threw the dam down, leveled it off, so it did not offer any formidable resistance, and left it in that condition; the stream is quite rapid at that point, and we are not subject to any overflow above them.

Q. State whether the lands of Jesse Adams, Moses Applegate, and Amos Wilson are any of them benefited by this drainage of the commissioners, and whether they can be benefited by the drainage, as now left by the commissioners; and, if not, why not?

A. I think they are not, and cannot be, on account of
159 the width and depth of the streams not being altered, that is, with reference to the two latter named places; and Jesse Adams is still above me on the Pequest, and I don't think there has been anything done on him toward clearing the stream.

Q. What kind of lands are these of yours which are assessed?

A. They are mostly woodlands, with light muck soil, would say thin muck soil, with a subsoil varying some clay, some blue sand, and some what we call quicksand.

Q. Were these lands affected in any other way than by the overflow of the Trout brook and the Pequest?

A. Do you mean as wet lands?

Mr. SHIPMAN: Yes, sir.

WITNESS: They are quite level generally, and rainfalls keep them wet for a considerable length of time, particularly where there is clay bottom or wet soil.

Q. Has the drainage had any influence upon this?

A. No, sir.

Q. Will these lands of yours bring the amount of this assessment, in the market?

A. Yes, sir.

Q. On what account, for the timber, or what?

A. For their timber, and as meadow lands, grazing lands; they are virtually sound lands, with the exception of this overflow and rainfalls that stand on the surface so long as to make them unavailable as grain lands; they are very good grass lands.

Q. Well, sir, are they any better grass lands now than they were before this drainage was commenced or ended?

A. No, sir.

Q. If you have to pay this assessment, will it be lost money to you, or will you get the worth of what you say?

A. It will be lost entirely.

Q. Describe the lands of Amos Wilson, Jesse Adams, and Moses Applegate, that have been assessed.

A. They are all about the same as that of my own that I have already described.

Q. Are any of their lands assessed tilled?

A. I think Amos Wilson's and my own are partly.

160 Q. How much of your assessed lands are tilled, how much of Wilson's, and how long have you each tilled the portions you are now tilling?

A. I think Amos Wilson likely has fifteen acres that has been tilled for twenty years or more, and probably ten acres of my own that has been tilled from ten to fifteen years; a portion of my underdrained land was included in the survey.

Q. Are you acquainted with the character of the lands along the whole line of the Great Meadows?

A. Somewhat acquainted, yes, sir.

Q. The lands included within the commissioners' survey amount to 5,500 acres, or thereabouts; they are assessed for benefits at an amount exceeding $107,000; will these lands bring that sum in the market?

A. I think not.

Q. State their market value at this time.

A. The meadows proper—that is, where there is no timber—are considered dear at any price, and the timber land, to a person not entitled to the timber, and if to remain on the land, as it now stands, would not be worth, on an average, ten dollars per acre.

Q. Well, suppose we take the timber, then what?

A. I don't know that I am a proper judge of timber as it stands on the land.

Cross-examined by Mr. LITTLE:

Q. What do you mean by the meadows proper?

A. Where there is no timber—the land boggy.

Q. Don't the timber grow all the way up from Larrison's bridge on the bank of the stream?

A. Yes, sir; I believe it does, and for some distance out from the stream.

Q. If I understand you, Mr. Ayers, you don't consider that any benefit has been received by any of the lands, except where work has been done immediately adjoining those lands, in clearing the stream?

161 A. No, sir; I do not, unless immediately adjoining work that has been done.

Q. Your idea is, then, that the lands above ought not to bear any proportion of the expense for the work of clearing the stream?

A. Yes, sir; that is what I mean.

Q. What is the character of the stream between the point you spoke of and the point where the dredging began, straight or crooked?

A. Very crooked.

Witness says: One thing I wish to state that I did not state before, with reference to the assessment on our property. It must be altogether for prospective benefits to our property, else very unjustly to benefit other properties.

G. H. AYERS.

Sworn and subscribed before me, this 8th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

Adjourned to Friday, January 9th, A. D. 1880, at 9 o'clock a. m.

Pursuant to adjournment, parties met January 9th, 1880, at the Clarendon House, Hackettstown.

*Coursen H. Albertson.*

I reside at Vienna, in Warren county; I am not engaged in any particular business; am a member of the Legislature at present; I know the Rev. Mr. Simanton; I know his lands near the Vienna bridge.

Q. Do you know of the lands which have been assessed on the Pequest, near the Vienna bridge?

162 A. I know of the lands; I don't know what part is assessed.

Q. Have you observed the condition of those lands in reference to being overflowed by the waters of the Pequest within the past year; if so, state what you have observed in reference to it?

A. They were overflowed last fall, some time early in the fall; there was a heavy rain, and the water raised very high there and

overflowed them; and early last spring there was a high freshet, and they were badly overflowed.

Q. Did you notice how long the water continued upon the lands last fall?

A. I don't think I did; I don't particularly remember the length of time last spring.

C. H. ALBERTSON.

Sworn and subscribed before me, this 9th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*Jacob Y. Langdon.*

I reside in Independence township, Warren county; I live on Dr. Wurts' land, and have ever since 1860; I was there four years previous; came there in 1856, while Dr. Paul had the property; I live on the northwest side of the stream; there are 960 acres in the whole of the Wurts' tract; I don't know exactly the number of acres of meadow lands that have been assessed; I have heard some 600 acres; I have known the lands of the Great Meadows upwards of twenty years; I have cultivated them some, and ascertained their character.

Q. By the map it appears that there are 104 acres of land above high water mark on the side where you live; will you tell whether this drainage can benefit those 104 acres any?

163 Witness is shown map.

A. No, sir; it can't.

Q. State your reasons for saying it cannot.

A. Well, there is fall enough to drain the land all that is necessary for farming purposes; from the nature of this land, it requires a little ditching to take the water off the surface of this land.

Q. Just go on; tell all about the land here.

A. If you drain the land any more than to take the water from the surface, the land is good for nothing for farming purposes; these lands suffer more or less every year from the effect of dry weather; I wish to make it plain before you; I have, in a middling wet season, run my mower over these lands with no difficulty, and in a dry summer I have attempted to do it and have failed, the soil being of a very dry and loose nature, so that the horses would mire down, and also the mower till the knives and cutter-bar were sunk out of sight underneath the sod.

Q. Well, you use the word "mired;" that word applies generally to mud or to wet ground; state the sense in which you use it here, whether the horses and knives and cutter-bar settled in the loose dry earth, or in the wet miry earth.

Objected to by Mr. Little, as leading in the worst sense.

A. Settled in the loose dry earth.

Q. State the character of the land in these 104 acres, or, rather, the character of the soil.

A. I think it's a very poor soil.

Q. What kind of a soil; muck, or what?

A. Very deep muck.

Q. How much of that have you tilled?

A. Some 35 or 40 acres.

Q. How long is it since you first began to till that?

A. Well, right away when I first came there, as I have stated to you, since 1856.

Q. Of what is the soil of the balance of this meadow land of the late Mrs. Wurts composed?

164 A. Principally muck.

Q. To what depth does that muck extend?

A. Well, I don't know; I think not as deep, all of it, as it is up above.

Q. Have you tried it by actual experiment—the depth of it in any place? If so, state what you found.

A. I have tried it this far, where I have been ditching I have run a rail down the length of it; I didn't find any bottom, and didn't care to go any farther.

Q. Have you examined these lands on your side, down near the creek, since this drainage work has been stopped, to see whether the land is wet or dry? If so, please to state what you found when you last examined it, as to its wetness or dryness.

A. I have; I found it very wet; the last time was since we met here last.

Q. Has this drainage had any beneficial influence upon the lands of Mrs. Wurts, according to your judgment and observation?

A. No, sir, it hasn't.

Q. The commissioners have assessed 674 88-100 acres of this land for benefits, in the sum of $13,347.84; will you please to state whether, in your judgment, these lands will bring that sum in the market, at a fair sale.

A. No, sir; I should not think they would.

Q. State what, in your judgment, those lands are worth—I mean these 674 88-100 acres of meadow land embraced within this assessment.

A. The most that I could put it would be five dollars an acre.

Q. Can these lands, in your judgment, ever be made valuable?

A. No, sir; I think it's beyond the power of man to do it.

Q. Why?

A. As I have stated why—why, if you drain the water all out of the land, and make it dry, the land is good for nothing for farming purposes; it won't raise anything.

Q. Are you acquainted with the lands generally along the Great Meadows, beside these lands of Dr. Wurts?

165 A. I am.

Q. Do you know the lands belonging to the Crane Iron Company, formerly what was called the Potter farm?

A. Yes, sir.

Q. Have you noticed whether any of those lands have, or have not, been affected by the drainage?

A. Well, I have noticed by observation; I have not particularly been over that land since the drainage, only a little of it; I could see no difference in that, what little I've been over.

Cross-examined by Mr. LITTLE:

I was over the Crane Iron Company's land along in June last, I think; I went to see my neighbor, Joseph Cummins; I wasn't there but a little while.

Q. How long were you there?

A. I had a little business with the man, and went to see him; I was there probably half an hour—not over; it may have been less.

Q. Did you go there upon an errand, or to make a friendly call?

A. Do you wish to know precisely what I went there for?

Q. My question was whether you went there upon an errand, or to make a friendly call; do you understand it?

A. I went on an errand, I said; and being acquainted with the man, I had a little friendly talk.

Q. Did you talk about this drainage?

A. Very little, if any; he was around below the rocks; I had to go around into the bogs a little to get where he was, to find him.

Q. How far was he from his house when you found him?

A. Perhaps one hundred and fifty or two hundred yards; he came back to the house with me, and after I had ended my business with him, it runs in my mind I went on to Danville; I won't be certain;

166 I followed the public road from my house to Mr. Cummins' house; and if I went to Danville, I followed the road to Danville; I don't recollect that I have been upon the Crane Iron Company's land at any other time since the drainage stopped; bogs do not grow upon land that is continually dry; I have seen some bogs on pretty high ground.

Q. Did you ever know bogs to grow on land not saturated with water?

A. Bogs grow on the land that is wet part of the time and dry part of the time, and they grow where it is continually wet.

Q. Isn't all your tillable land wet sometimes and dry sometimes, on the surface? If so, why do not bogs grow there?

A. Bogs do grow there, on all of it; if it lays some three or four years without plowing, we have to go and cut them off—scattering bogs.

Q. Does all your tillable land lie, then, on the flat known as the Great Meadows?

A. No, sir.

Q. Do bogs grow, then, on the upland? On the hills that are cultivated?

A. I haven't said that they did; you were talking about meadow land a moment ago, now you are talking of hard ground.

The witness says he wishes to explain that he has been speaking of the one hundred and four acres only—the low ground.

Q. What is that one hundred and four acres worth per acre?

A. I don't think it's worth any more than any of the rest of it—well, five dollars an acre.

Q. Have you cultivated the whole of it at any time since you have lived there?

A. No, sir; probably some thirty-five or forty acres.

Q. What did you raise on it?

A. Grass, as a general thing; I have tried other things on it—corn and buckwheat; I never raised much.

Q. Why didn't you cultivate it all?

167 A. I have already cultivated more than paid me; I have known Dr. Paul to cultivate some part of it, so far as I know, probably as much as I've been a cultivating; I don't know particularly what portion of that thirty-five or forty acres he plowed; he raised a little corn and some potatoes and grass; I never knew him to raise a large crop of corn to the acre; I have heard of his doing so once before I came there; there is more than one reason why, though done once, it can not be done again; well, you make take a piece of them bogs that have never been cultivated, and cut the bogs off, and plough that wild ground, it has got a tough sod; when the corn takes root into it, it can stand up and grow, if the season is favorable for it, and well tended; well, then, after that corn, you plough that sod, after it becomes loose, and broke up, it becomes like an ash heap, and corn won't stand up; a little wind blows it down; the dry weather also affects that ground more than it does hard ground; a good deal of the time that ground is either too wet or too dry; that's why I spoke of the season being favorable.

Q. Taking your evidence altogether, I understand it as declaring your opinion that the lands embraced in the Great Meadows would be rather injured than benefited by effecting draining; am I correct, or not?

Objected to by Mr. Shipman, as irrelevant, and because it don't state the opinion of the witness fairly.

A. You are correct; yes, sir.

JACOB Y. LANGDON.

Sworn and subscribed before me, this 9th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*George H. Ayers.*

Witness being shown map, marked "Exhibit I," is asked:

168 Q. What designates the boundaries of your land?

A. This broken or dotted line, and the Pequest from the corner of Jesse Adams' land to the corner of Amos Wilson's land; the fish dam I spoke of is designated by the letter D, near the junction of the spring run with Pequest.

Q. Did the clearing out of the Pequest by the commissioners from

the point you have designated produce any effect on the Pequest river above that point, either in preventing backwater or overflow?

Objected to by Mr. Little, on the ground that the witness was previously examined thereto and dismissed.

A. It did not; nor below, either, as far as the map extended.

Q. I meant by my question, whether the drainage of the Pequest with the dredge from the point where they started in the Pequest has produced any effect on the Pequest river above the point where they started with the dredge either in preventing backwater or overflow?

A. I think it has from there up to the junction of the Pequest and Trout brook; from there a distance of about a hundred yards; it has produced a rapids or current in the stream that has washed away the bottom of the stream from that point; it has not affected the stream along my land any.

Q. Did you have any conversation with Judge Boyd about the benefit to your land? If so, state what it was, and where was it.

Objected to.

A. I had, on the eleventh of October last.

Objected to by Mr. Little, as to the conversation.

WITNESS: I found that we had been assessed for benefits; I called on Judge Boyd to know why we were so assessed, and to show him that we were not benefited, and tried to prevail with him to take off the assessment from our property; he stated that he had been by there a short time before, and he couldn't see that there was any benefits to our property; that he would talk to Mr. Hoagland and Mr. Day about it and see what could be done for our benefit in the way of lifting the assessment; he seemed
169 to acquiesce in my view; that's the substance of it all.

Cross-examined by Mr. LITTLE:

The current had increased by the dredging up to the mouth of the Trout brook; the rapidity of the current at that point was increased considerably; very much, you might say; the conversation was at Judge Boyd's own house; the fish dam I spoke of, before I levelled it down, at an ordinary time of water, extended from a foot to eighteen inches above the water; I leveled it down, I think, in 1855 or 1856; since that time it has not extended above the surface, except at time of low water; it does yet at such times.

The witness says he wishes to explain what he meant in his testimony yesterday by the term "prospective benefits:" That what the commissioners have done can never benefit the lands I spoke of unless they do something hereafter.

G. H. AYERS.

Sworn and subscribed before me, this 9th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*Moses Appelgate.*

I live in Warren county, Allamuchy township; I am a farmer, and have been since I was a boy; I am fifty-one years old; I am acquainted with some portion of the Great Meadow lands; my lands have been assessed for benefits in about three hundred dollars, they say; about twenty acres, they say, are assessed.

Witness being shown map marked "Exhibit H," is asked:

170 Q. Does that map show how the Pequest runs through your farm?

A. Yes, sir.

Q. Had you ever cultivated those lands that are assessed?

A. No, sir.

Q. What use did you put them to?

A. Pasturing.

Q. Has this drainage produced any beneficial effect upon these lands?

A. No, sir.

Q. Can it?

A. No, sir.

Q. Why not?

A. because it's just right, and don't need any drying.

Q. Do you know where they commenced with the dredge in the Pequest?

A. Yes, sir; they commenced at the long bridge and went up to the mouth of Trout brook, and then turned around and went down.

Q. Has this drainage of the Pequest produced any effect on its backwater or overflow through your lands?

A. No, sir.

Q. Can't it produce any?

A. No, sir.

Q. Why not?

A. Because there wes plenty of fall to drain my lands, and they are dry enough, and any drier would be a detriment to them.

Q. Are your lands any drier since the drainage than before?

A. No, sir.

Q. Can they be made any drier by this drainage?

A. No, sir.

Q. If you should have to pay this sum assessed against your lands, would you be benefited, or would it be a loss of so much money to you?

A. It would be a complete dead loss—every cent.

Q. How long have you used these lands for pasture lands?

171 A. Ever since 1863.

Q. Do you know the land of George H. Ayers, Amos Wilson, and Jesse Adams?

A. Yes, sir.

Q. Are they benefited by this drainage?

A. I should think they was not.

Q. Why not?

A. I don't think it dries them any by the dredging.

Cross-examined by Mr. LITTLE:

Q. Are the lands of Wilson and Mr. Ayers that are assessed of about the same character as your own that are assessed?

A. I think theirs are a little lower than part of mine.

Q. Do your lands lie on both sides of the Pequest, or only on one side?

A. I have some on both sides; there is a little the most of my assessed land on the north side, and on that side they are the lowest; my farm is on the north side; my lands on the north side are nearly of same character as Mr. Wilson's and Ayers' land; a part of mine is higher; I have never mowed my assessed lands, except a little bit; my land is timber land—swamp timber, nicely sodded over, splendid pasture, early and late; my land would make good meadow land, and a part of it good plow land if timber was taken off, especially on south side, and some on the north side; there's some in there I could farm, but it pays me better the way it is; the majority of my assessed land is dry land, and has been always so since I have lived there; it is no more wet than when I came there, and no drier; there are springs on it, two or three, that let in from a ledge that makes it a little springy along there, that let in the creek; there are no springs on the south side. The dredging below Trout brook has not produced any effect on the bed of the stream between my line and Trout brook; the current of the Pequest on my land has not been increased in rapidity by the work of
172 the commissioners; I think the stream runs no more rapidly through my land than before.

Q. What is the fall across your land from the exterior line of the commissioner's survey to the Pequest?

A. That I couldn't tell.

Q. Did you never have it leveled?

A. I think Mr. Ayres did when he drawed my map.

Q. Whose land joins yours on the north side of the Pequest and easterly of your easterly line?

A. Mr. Nelson Gibbs.

his
MOSES x APPLEGATE.
mark.

Sworn and subscribed before me, this 9th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*Aaron Van Buskirk.*

I reside at Danville, Warren county; have always lived there—forty-eight years; my business is, and has been, farming, principally.

Witness being shown deed marked "Exhibit L," on the part of

Aaron Van Buskirk, from Benjamin F. Howey, sheriff, to Aaron Van Buskirk, is asked:

Q. Are you the grantee in that deed named?
A. I am.

Being shown "Exhibit D," is asked:

Q. Can you point out any of the lands on the map that are embraced in the deed shown you?
A. I can; this part assessed to S. T. Scranton; 24.66 acres, and number 38 on the map.
Q. When did you become the owner of that?
173 A. I purchased on the 23d day of June last.
Q. When you bought the land, what was your understanding and information as to its being in or on the outside of the geological survey?

Objected to by Mr. Little.

A. I understood this 24.66 acres to lie outside of the survey.
Q. Did you buy and pay for the land with that understanding?
A. I did.
Q. What information and advice had you in reference to the exemption of this land from the assessment at the time you purchased?

Objected to by Mr. Little.

A. The attorney who prosecuted on the mortgage told me it was entirely free from the Great Meadow drainage; that no assessment could be held against it, and gave his reasons.
Q. Who was the attorney?
A. Mr. Taylor, practicing at Belvidere.
Q. Were you influenced by that in the purchase of the property, that it was exempt from the assessment?

Objected to by Mr Little.

A. I was.
Q. Are there any other lands embraced in this deed, except the 24.66 acres that you purchased with the same information from the attorney, that it was not liable to the assessment; if so, how much was it?

Objected to by Mr. Little.

A. Yes, sir; 14.40 acres.
Q. Why did the attorney say these 14.40 acres were not liable?

Objected to by Mr. Little.

A. From the fact that a notice had been served on the commissioners of drainage, if they had any claims or liens whatever upon this property to file it in before the chancellor, and that they had neglected or failed so to do, consequently the chancellor had issued a decree cutting off their claim, if any they ever had.
174 Q. Were you influenced and governed in the amount you paid for these lands by this information?

A. I was.

Witness being shown "Exhibit F," on the part of E. Simanton, is asked:

Q. Have you ever seen notices similar to that; and, if so, where?

A. I think I have seen similar notice in one of the Belvidere papers, somewhere along in seventy-one or two; somewhere along in those years.

Q. Can you tell by the boundaries described in that paper whether the 24.66 acres are outside or inside the geological survey?

A. By this paper, defining the survey to cross the Pequest near the steam mill, thence to the place of beginning, clearly puts the 24.66 acres outside; I am the owner of other lands beside those mentioned in this deed; they lie in the townships of Hope and Independence; I have been assessed for some of my other lands, amounting to some seventy odd acres in all, and in the sum of about $2,000, accurately, as follows:

| | |
|---|---|
| One tract of 23.50 acres assessed | $658 00 |
| One tract of 7.39 acres assessed | 206 92 |
| One tract of 42 acres assessed | 940 00 |
| All together, 72.89 acres assessed | $1,804 92 |

In my judgment, those lands at a fair sale in the market would not bring that amount of money; I have tried those muck lands considerable, to ascertain whether they could be made valuable or not, and the result of my experience has been rather a varied one; my conclusion is, that where the muck exists, say, from three to five feet, they are of but little value. In regard to the worth of those lands under assessment, I would state that, excluding the seven acres, I would make a warranty deed to a man for ten dollars an acre, he assuming the assessment.

175 Cross-examined by Mr. LITTLE:

Q. Is there any other person by the name of Aaron Van Buskirk in the neighborhood of the Great Meadows?

A. Not that I am aware of; I do not know who initiated these proceedings for drainage, except that I am one of the signers to petition for appointment of commissioners.

Re-examined by Mr. SHIPMAN:

Q. Did anything influence you to sign that petition in reference to the cost of the work; if so, what was it?

A. I was principally influenced by general rumor, talked of since I was a boy, of draining these Great Meadows; that it could be done at an expense that would not exceed five dollars per acre; I was further strengthened in that view by estimate made in 1826, by one Edwin A. Douglass, civil engineer, for a cut through near the Danville church, for the same purpose of drainage; and furthermore, upon Professor Cook's report as to the prospective cost; putting all

together, I formed the opinion that if the enterprise could be accomplished at an expense that would not exceed five or six dollars per acre, that the land owners would be probably benefitted thereby, without serious injury to the land owner; these are about what I based my opinion on when I signed the petition, or which rather led me to sign it.

Being shown "Exhibit M," on part of Aaron Van Buskirk, is asked:

Q. Is that the report of Edwin A. Douglass that you spoke of, and where did you find it?

A. This is the report that I spoke of; I found it among my father's papers.

Being shown printed book marked "Exhibit N," on part of Aaron Van Buskirk, is asked:

Q. Is that the report of Prof. Cook, to which you referred?

176 A. I presume this is the book; this looks like the book; I think it is; it is my impression that the Professor put the whole cost at $40,000; that book doesn't say so; I see that defines the cutting from the steam-mill dam—estimates the cost, I mean.

Recross-examination by Mr. LITTLE:

I did not induce any other persons to sign that petition; Andrew Cummins brought it to me; I found this Douglas estimate possibly twenty-five years ago; I have had it in my possession ever since; I think I showed it to Mr. Hoagland once, or told him; I don't recollect showing it to any one to induce them to sign the petition; I don't know in whose handwriting that original petition was; I understood that plan of Mr. Douglas to change the whole course of the Pequest from above the Larrison bridge, running in a straight line through by the Danville church till it met the old channel, about half a mile below the Danville bridge.

AARON VAN BUSKIRK.

Sworn and subscribed before me, this 9th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

By consent of counsel the further taking of depositions is adjourned till Friday, January, 16, A. D. 1880, at 10 o'clock a. m., at the Clarendon House, in the town of Hackettstown.

Pursuant to adjournment, parties met January 16th, A. D. 1880, at the Clarendon House, in the town of Hackettsville, New Jersey.

177 Present: Mr. Shipman, on the part of the exceptants, and Mr. Little, on the part of the commissioners.

DAVID JENKINS, a witness produced on the part of the Crane Iron Company and others, being duly sworn on his oath said:

I reside at Mine Hill, in Morris county, New Jersey; I am employed by the Crane Iron Company, and have been for twenty-four years; my duties are the charge of their mines and properties in Morris, Warren, and Sussex counties; I am acquainted with their lands assessed in Warren county—part of the Potter farm; I have been over those lands; I was over them in December last.

Witness being shown map marked "Exhibit B," is asked:

Q. Please look at that map and state whether the lot marked on it as No. 35, containing thirty-eight acres, can be in anywise benefited by the drainage made by the commissioners; and, if not, why not?

A. No, sir; I don't think it possibly can be benefited a particle; my reason for it is, that it is above the high water mark of the Pequest. I have also been over that lot previous to the clearing out of the Pequest; and I have been over it since the clearing of the Pequest; and that land to-day is not any drier than it was before.

Q. How about the fall there?

A. The fall is 3.66 feet, as appears on the map; I don't know anything about it except as appears by the map.

Q. Youv'e seen the ground there; state if you have observed the fall and its capacity to carry off the water from the 38-acre tract if proper ditches are made.

A. Yes, sir; I have noticed that high ground there, or what is called the high ground; I think if proper ditches were made in that high ground that it would drain it somewhat.

Q. Has any part of the thirty-eight acres been cultivated; if so, how much, and for how long a time?

178 A. Yes, sir; there has been two or three acres; I don't know exactly how much, but there is a little spot there; how much, I don't know; it was cultivated before I saw it in the year 1872.

Q. You say you saw it in December last; describe whether there was any difference then from its former condition, and what its condition was in December last—I mean the thirty-eight acres.

A. It was drier in December last than I had ever seen it—drier than for years; the water was in the ditches, and the ground was wet—too wet to cultivate, or anything like it.

Q. You say it was drier than you had seen it for years; what did that dryness proceed from—the season, or what?

A. I believe it was the season, sir.

Q. What kind of a season was last season?

A. It was a very dry season.

Q. Have you ever seen so dry a one?

A. No, sir; not in twenty-four years that I have been in charge of the mines in Morris and Warren counties have I found the water so low.

Q. Where does the water come from that runs on the thirty-eight acres, then?

A. Well, some of it comes down off the side hills, and there are also streams of water near the high lands connecting the high land with the meadows.

Q. Look at the lot No. 34, on the map B, containing 27 acres, and state whether you have been over that land lately.

A. I was over that lot in November last—on the fourth day of November—gunning.

Q. In what condition did you find it, as to wetness or dryness?

A. Very wet.

Q. Could you walk over it?

A. Yes, sir; I did walk over it; had some difficulty; had, in some places, to step from bog to bog; I got in the mud.

Q. Was that land in a condition for tillage?

179 A. No, sir.

Q. Have you been along the Pequest creek lately?

A. I was over part of it yesterday.

Q. State over how much of it.

A. Well, I was over a mile and a half or two miles of it; I began at Larrison's bridge; I went up the creek a mile and a half or two miles; I don't know exactly the distance I went.

Q. State how the water in the creek was, whether low or high.

A. Well, I couldn't call it high water; of course, it wasn't low water; it was medium, I should think.

Q. State what you observed in the creek about obstructions.

A. I noticed some places, as I went along, that the banks were not over three feet and a half above the surface of the water; some places I found that the banks had been washed under and caving in; some of the stumps of the trees had been undermined by the water, and now they almost laid in the stream; I also noticed at one point in the stream a sand bar; I stood there from ten to fifteen minutes, and I watched the eddy of water; I saw some leaves carried around by the water and deposited on that sand bar.

Q. Describe the size of that sand bar.

A. I can't tell how large it was; the top of the sand bar was within two inches of the surface of the water; the bar was about a mile and a half above Larrison's bridge.

Q. State the present value of those two lots of land of the Crane Iron Company.

A. Well, if I were to state the value to the Crane Iron Company, I believe they are a damage to them; I don't believe that they are worth the taxes that the Crane Iron Company is paying on them; I mean the Crane Iron Company—I don't mean anybody else.

Q. Well, what's their market value then?

A. I don't know.

Q. The two lots together are assessed for benefits by the
180 commissioners at the sum of $1,232.46; will those lots sell for that sum in the market, in your judgment?

A. No, sir; I don't believe they will.

And being cross-examined by Mr. LITTLE, says:

When I say that these lands are not worth to the Crane Iron

Company the amount of taxes, I mean that they don't get enough off of them to pay the taxes.

Lot number 34 is the wetter of the two, and is nearer the creek.

The water that drains from No. 35, on its way to the creek, partly goes over or through lot No. 34.

The surface of No. 35, on the average, is higher than that of 34. I can't tell how much.

The difference in the level of the surface, when passing over the two lots, is perceptible to the eye by close observing.

The land between what is marked on the map as the exterior line of drainage and the road is high, rocky, and hilly—very high cliffs. North of the road the land consists of a very abrupt hill.

As Mr. Joshua Hunt, in the previous case, stated in his testimony, a part of the water which runs over this lot 35 comes from the Jenny Jump mountain. There is a small creek on the westerly end of the property, which comes from the mountain and runs down on a part of No. 35.

A part of the water which flows over or through No. 35 comes from springs along the southern boundary, oozing out of the cliffs.

I can here designate the point where that sand-bar I saw was in this way: It was a mile and a half above Larrison's bridge, at one of those short curves, on the easterly side of the Pequest.

I don't know Schmuck's brook by that name, and can't say whether it was above or below it, for that reason. I passed, in my walk along the Pequest, one brook there that I had reason to suppose was a brook. The water curved around to the east, and I don't know whether it was an old channel or brook. I crossed on the fence.

181 It had a very slow, sluggish current. The sand-bar was possibly two-thirds of a mile above this brook or old channel I speak of.

I will explain whether at the point where I saw the sand-bar the Pequest had a rapid or slow current, in a way that I understood myself. I throwed a stick into the stream and watched it, followed it down, and I believe that stick traveled at about the rate of four miles an hour.

The depth of the water in the stream that day I can't tell. I can't tell the point at which I stopped my journey along the Pequest. I had been over lot No. 34 before last November every fall since 1872.

There are remains of ditches filled up on lot No. 35. On 34 I don't know. I never traced those ditches on 35, nor found out where they led to.

Those two or three acres of lot No. 35, which I said were cultivated, are on the westerly corner of the meadow land.

The high ground I spoke of on lot No. 35, which could be cultivated, if properly drained, is the central part, and contains probably about 20 acres.

Q. Do you think that the lowering of the bed of the Pequest opposite these lands four or five feet would be of any advantage in efforts to drain them?

A. Not unless there was drains made from those lands to the

Pequest. I don't believe it would be of any advantage whatever without.

Q. If they made the drains, would such lowering of the beds be of advantage, or not?

A. It would.

Q. Would such lowering of the bed tend to increase the current of the stream?

A. Yes; I think it would somewhat; that is, by taking the stumps and snags out of the stream.

Q. How far from the margin of the Pequest was that fence on which you crossed the brook?

A. Why, it was close by the Pequest.

Q. How far did that bar, which you spoke of, extend out into the stream?

182 A. From what I could see of it, it reaches from five to six feet from the bank, making an angle of forty-five degrees to the stream.

DAVID JENKINS.

Sworn and subscribed before me, this 16th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

CHARLES W. CHAPMAN, a witness produced on the part of the Crane Iron Company and others, exceptants, being duly sworn, said:

I reside at Catasauqua, Pennsylvania; I am superintendent and engineer of the Catasauqua and Foglesville railroad; I am an engineer by profession.

Q. Do you remember visiting the Pequest river on that occasion; if so, when was it, and what part of it did you visit?

A. I do; last November; from three-quarters of a mile above the steam mill bridge nearly to the Vienna bridge.

Q. State what you observed in reference to the sand bars and obstructions in the Pequest in the part of it you examined.

A. The largest sand bar was in the bend of the creek below the steam mill bridge, near the woods along the creek; the sand had filled in from the east side of the creek, so as to throw the channel on the west side; it occupied six or eight feet of the channel, and part of it was a little above the water; above the steam mill bridge there were several places where the bank had fallen into the stream and dammed or stopped the flow of the water to a certain extent.

Q. Did you measure the width of the stream at any place with a measuring line; and, if so, whereabouts on the stream did you measure it, and what did you find the width to be?

183 A. I did about a quarter of a mile above the steam mill bridge, and found the width to be twenty-six feet at the surface of the water.

Q. How did other parts of the stream compare with this width?

A. There was other parts that I do not think was any wider; I did not measure them.

Q. Were there many such places?

A. There were several such places; I couldn't tell how many.

And being cross-examined by Mr. LITTLE, said:

I don't know what the gentleman's name was who assisted me in making this measurement; I had never seen him before; he did not go there at my request; we were walking down stream; he was on the opposite side, and I threw the line to him; Mr. Shipman, Mr. Hunt, Mr. Garrison, Gen. McAllister, Dr. Wurts, and, I think, Mr. Ayers, and one or two others, whose names I did not hear, were with me; the time was last November, if I remember aright; I cannot designate with more particularity the place where that measurement was made; the condition of the water that day as to depth, I should judge, was fifteen or eighteen inches deep; the particular locality of the sand bar, if I recollect, was in the bend just above the woods, on the east side; there are woods between the Vienna public road and the steam mill bridge; I don't know whose land the bar was on; there is a sharp curve in the river between the steam mill bridge and the Vienna bridge; the river turns to the left at the point where the sand bar is.

CHARLES W. CHAPMAN.

Sworn and subscribed before me, this 16th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

184 JEROME G. STOUT, a witness produced on the part of the Crane Iron Company and others, being duly sworn, said:

I reside beyond Hope, in this county; previous to last spring I lived on the Crane Iron Company's farm; I moved off of there the 20th of last March; I had lived there prior to that six years, lacking a few days; it was the Potter farm I lived upon; I know the lands included in the assessment here.

Witness being shown map marked "Exhibit B," is asked:

Q. Please to state whether the drainage of the Pequest river by the commissioners can benefit that tract of land.

A. No, sir.

Q. Why not?

A. Well, if they'd open them drains there of their own, it would benefit itself.

Q. Did you cultivate any of the lands in lot 35; if so, how much, and when?

A. Well, I suppose it's in the neighborhood of three-quarters of an acre—the two last years that I was there.

Q. Did you cultivate any prior to November, 1876?

A. I think not.

Q. Just think about it?

A. We're in '80 now, hain't we? I think I did plough that at that time.

Q. What time?

A. Seventy-six.

Q. Look at the other lot there just below on the map, and state whether the drainage has been of any benefit to that lot.

A. No, sir; it hasn't benefited it a cent's worth.

Q. Have you been over and about that lot this last summer?

A. No, sir; I wasn't over that lot; I was over about the house and barn, and took my harvest off.

Q Well, did you observe this lower lot any while you were there, as to wetness?

185 A. No, sir; that's 34 you mean?

Mr. SHIPMAN: Yes, sir.

Q. Well, why has not the drainage, in your judgment, benefited lot No. 34?

A. Well, I don't see as it's any drier than it has ever been since I been there, except dry seasons, then its a little drier than in the spring and fall.

And being cross-examined by Mr. LITTLE, said:

I could not tell what time I was over No. 34; I've been over it pretty often the last year I lived there, looking after the cows, helping them out of the mud, and such like; they are pretty apt to get mired there; I have lost cattle from miring; they were mired on the lot, I suppose what you call 35, I guess, on what I understand to be 35; then I've had them fast on the other lot also; it's kind of springy all along that high cobble there, and that is where the water came from that made it so miry there; there are kind of ditches on that lot 35; they are kind of shut up; you can see they've been there; some of those ditches lead across to another ditch, different directions; I guess I have followed them over to that other ditch; I have traveled it over often enough; I don't know whether lot No. 35 or 34 is the higher ground, I never took particular notice of that.

The ditches in lot No. 35, I have spoken of, ran right across to one big ditch that ran down across that these others led into; the big ditch is on the Crane Iron Company's land; the one I refer to is not a line ditch; that large ditch was nearly closed up, I guess; water would just stand in it; nearly filled up; there was not any current there.

That big ditch I don't know as I ever traced; I don't think it led any farther than to the little strip of woods there; I understood the strip of woods to be on the Crane Iron Company's land; I know I got timber off of there for them.

I couldn't hardly say whose land lies between the Crane
186 Iron Company's and the Pequest; I understood Mr. Shipman owned a piece in there, and Dr. Roe and Mr. Vansyckle claims a piece there.

That land, part of it, is pretty boggy, and some of it isn't very boggy; it becomes more boggy as you approach the river.

JEROME G. STOUT.

Sworn and subscribed before me, this 16th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*Charles Stuart Wurts.*

I reside in Philadelphia, Pennsylvania; I am a son of Mrs. Mary V. Wurts; she is dead; she died August 31, A. D. 1877; she was formerly the owner of these lands assessed; she left a will; Mr. Robert Lenox Kennedy married my sister; Mr. Kennedy and myself are devisees of these lands, under her will.

Q. Do you feel aggrieved by this assessment made upon these lands?

A. I do.

Q. By the assessment made by the commissioners, dated in September, 1879, they have assessed 674 88-100 acres for benefits, amounting to the sum of $13,347.84, or thereabouts; in your judgment, sir, will those lands bring that sum in the market?

A. I think not.

Q. Will you sell them for a less sum than that; and, if so, for how much less a sum—I mean these 674.88 acres.

Objected to by Mr. Little.

A. I certainly should sell them for less; how much less, I am not prepared to say; I should like to have an offer.

Being shown map marked "Exhibit C" on the part of Dr. Wurts and Mr. Kennedy, is asked:

187 Q. State what your observation has been about the 104 acres marked on that map, in reference to its cultivation prior to the drainage and its fall for self drainage.

A. My impression is that about one-half of this piece referred to was under cultivation by Dr. Paul, and I have seen the water running freely in the ditch when it was open.

Q. Have you observed the fall there yourself?

A. I thought the natural fall was sufficient to carry the water off.

Q. State what your observation has been in reference to the 316 acres on the southeast side of the creek, in reference to the capacity of the natural fall to drain those 316 acres, and whether they can be benefited by the drainage as made by the commissioners.

A. A large portion of the eastern end of this piece referred to I have always considered to have sufficient natural drainage, if properly ditched; I think that 316 acres, the part above the high-water line, cannot be benefited by the drainage.

And being cross-examined:

It was shortly before my mother became possessed of this property, in 1858 or 1859, that I saw a part of the 104-acre tract under cultivation; I was then 28 years of age; I took a long walk, I remember, down that ditch in which I said the water was running freely—nearly to the woods, I should say; I couldn't say how near that was

to the Pequest; I have been over the whole ditch since—to the Pequest; I think it was in the summer of seventy-three or thereabouts. The ditch was filled up then the greater part of the distance; it had filled itself through neglect; I think it has been filled up for many years; my recollection is of a rapid current in that ditch for a large portion of the way; the water in the ditch came, I suppose, from the meadows—from the bogs; it is wet northwest of the high bluff; there is wet land and a stream between the high bluff and the public road; my mother's land extended nothwest of the
188 public road leading to Johnsonburg; above the road the land is high; I cannot say how the water from the wet land and the brook got into the Pequest; I suppose it went down the ditch; when I said the ditch was filled up I did not mean entirely obliterated, because there is some drainage still through it—the upper part of it; still, I have not been there for three years.

Q. Do you know whether or not, for many years past, that ditch through the low ground has been so completely filled up from some cause, that there has been no perceptible current in it long before it reached the Pequest?

A. I think I know.

Q. What has been the condition of it, then, in that respect?

A. It has been so filled up for a long time as to obstruct the flow of the water perceptibly; my knowledge is not sufficient to answer the question more fully.

Q. If that has been the fact that that ditch has been so obstructed as to prevent the flow of water through it, what has been the necessary effect upon the adjacent land?

A. To keep it wet.

Q. You spoke of the easterly end of the 316 acres as having sufficient natural drainage if properly ditched; were there any ditches through it?

A. When I first knew the property, the ditch into which Schmuck's saw-mill brook emptied, was open, and the water flowed freely through it; from the public road that stream has a pretty rapid descent till it enters the ditch, as marked upon the map, "Exhibit C."

Q. Was that ditch, or not, the main reliance for the drainage of the 316 acres?

A. Those lands were never drained.

Q. Were they very wet?

A. At times.

Q. Did you ever follow that ditch to its outlet?

A. I never have.

Q. You know nothing of the character of the outlet from your personal knowledge?

A. I do not.

CHARLES STUART WURTS.

189 Sworn and subscribed before me, this 16th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

ROBERT MCALLISTER, a witness produced on the part of the Crane Iron Company and others, being duly sworn, said:

I reside at Allentown, Pennsylvania; I formerly resided at Oxford Furnace, and at Belvidere—six years at Oxford; my family moved to Belvidere during my absence at the war, and remained there till 1873; I knew Dr. Paul very well; he is dead; he died about the 18th day of December last; I have some acquaintance with the Pequest river; I have been there at different times.

Q. State whether you was there on the day spoken of by Mr. Chapman, in his evidence, and whether you traced the Pequest the same distance Mr. Chapman did; if so, state what you observed in reference to obstructions in the stream, and in reference to its banks.

A. I was with the party that day; went up and down the same distance that Mr. Chapman did; I think we went up three-quarters of a mile; I noticed the ditch that came in, I think, from Cummins' land, judging from the direction; where that ditch enters the Pequest river, I believe you call it, there was a very considerable amount of sand and loam fell in from sides of the stream and ditch, and washed into the bed of the river, forming a considerable obstruction, which, if continues to accumulate, will be a considerable barrier to the water-course; at that place, and along down the stream on both sides, was a very considerable amount of caving in from the sides, for the want of more slope in the banks; some other places between that and the steam mill bridge were more or less forming of material in the bottom of the channel-wash, you may call it; below that bridge, in the woods spoken of by Mr. Chapman,
190 there was quite a lot of washed material also obstructing, forming a reef, or whatever you may call it—an obstruction just as Mr. Chapman has said; in many places the banks were washed under, and would naturally have to cave in.

Q. Have you been accustomed to making walls or embankments, General?

A. Yes, sir.

Q. What kind—railroad embankments?

A. Yes, sir; all kinds of embankments.

Q. What's the general slope you give to embankments in constructing railroad embankments?

A. When the material is good, one and a half to one; when the material is not good, it ought to be two to one.

And being cross-examined:

I am speaking now of railroad banks, canals, and ditches—anything of that kind; I mean both embankments to sustain superstructure as railroad embankments, and also to resist water, such as a canal embankment; the reason a greater slope is required when the material is lighter is because it must come to a natural slope in the course of time; we follow nature as much as possible; our object is to secure strength and provide for the preservation of the embankment from the washing away of the material; the soil of that portion of the Pequest above the steam saw-mill bridge is very

light; that below is of a different material; the natural tendency of such embankments is in course of time to come to such a slope as I spoke of; there is a material called quick-sand, that there is no telling where it will go.

Q. Do you think that there is the same necessity for sloping the banks in widening a stream like the Pequest that there would be in building an embankment for a canal or railroad?

A. I do.

Q. Is not the natural tendency of such a stream to produce the proper and necessary slope by its own action?

A. It is; but there's where it fills up the stream.

Q. Is it or not a natural tendency of a stream that fills
191 so rapidly as the Pequest does at certain seasons of the year to clear itself of such earth as may fall in from shaping the bank?

A. It is not safe to rely upon the stream.

Q. Have you had any experience, General, in that matter?

A. I have.

Q. When and where?

A. I have had experience in Juniata county, Pennsylvania, where I was born and raised, in a large amount of ditching and drainage done on my father's farm; I have had experience changing streams, building railroads, near Milton, West Branch, Susquehanna; I have had experience — North Pennsylvania railroad, near Jenkintown, besides a great deal of other work that I have done in other parts of the country.

Q. What was the work at Jenkintown, General?

A. The work at Jenkintown was taking out and changing the bed of the river in order to make the railroad straighter.

Q. What stream was that?

A. That slips my memory just now; it runs down towards Philadelphia.

Q. What was the width of it?

A. Over twenty feet; we dug it out and sloped its banks; we changed the bed of the stream for, perhaps, thirty or forty rods; perhaps more; I don't recollect exactly now.

Q. What was the character of that stream?

A. It is one of those small streams that rises with rains; the country has hills and hollows; it was the bank of the Susquehanna canal that I changed at Milton.

Q. How long a time do you think, General, it will take to show the ill results of leaving the banks without proper slope?

A. It depends on the stream very much and the kind of soil.

Q. Would it show more quickly in a stream that is apt to rise very rapidly, or in one in which the water continued in about an average state?

192 A. A rapid rise of water would tear out and loosen a larger quantity of material in a given time, but the increased velocity of a smaller stream will carry more of it down a greater distance; a slower, steady stream will do the same work in a longer time, and leave the material in nearer proximity.

Q. Isn't the danger much less from such deposit in a rapidly flowing stream than in a canal where there's little current?

A. I would answer no.

Q. Do you think it's greater?

A. I think it is.

Q. Are you acquainted with Capt. Eads' system?

A. I don't know, sir, that I am.

Q. Do you not know that that is a part of his system—to let the current shape the banks?

A. I believe there is a man of that name that undertook to open the mouth of the Mississippi; I don't approve of it; I don't endorse the system.

Q. You said in many places the banks were washed under, and would naturally have to cave in; was there a bar forming at any such place?

A. Not at any such place; there was at other places.

Q. Was there a bar at any place where the water had washed under the bank and the bank was still standing?

A. I don't know that there was at the point where the washes were, but it was the stuff of which these places were forming; you can't run the stuff up stream.

Q. How many places did you observe that day of which you can say that obstructions were visibly forming in the bed of the stream?

A. I spoke of the place where the ditch came in as the first; I spoke of the one by the woods as the second; some other places that was forming on the side of the channel, throwing the stream to the opposite bank.

Q. Where did you commence your observations that day?

A. We commenced above the steam saw-mill bridge, and went up to where the ditch comes in—I think from the Cummins
193 property; I don't know; a long ditch comes in; we came down the left bank of the river to the steam saw-mill bridge, crossed to the right bank, following the stream down to the Vienna bridge.

Q. What was the depth of the water in the stream that day?

A. It varied; I would suppose from fifteen to twenty inches; we did not measure, but I take that from what I saw.

ROBERT McALLISTER.

Sworn and subscribed before me, this 16th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

POLHEMUS CUMMINS, a witness produced on the part of the objectors, being duly sworn, said:

Q. Mr. Cummins, have you recently traced the Pequest river to ascertain whether there were any obstructions [illegible] it; if so, for what distance, and when?

A. Yes, sir; yesterday I traced it, commencing at the long bridge

and went down to the lower end of Bulgin's job—that is right there between Abers' and where the widow Crowell's house is—half way, I should judge; my oldest son, who is here, was with me.

Q. State what you observed in reference to destructions in the stream.

A. I observed a caving of the banks and forming of sand bars, in number fifty-three, on the sharpest turns of the creek, the bars lay on the inside current, together with stumps, already fallen in; the undermining of the banks on the opposite side from the bars, where it turns forms an eddy, throws up the bar, logs in the bottom of the stream, causing the filling of the stream on the inside of the curve where it comes around, in numbers of places, where it had filled in from the bank into the stream, six and eight feet from the
194 bank, above the surface of the water. I would add add, beside, numerous places where the stream was not so crooked, we could perceive numerous places where the sand was lodging on the inside; the creek is quite high now, and there places on those bars that extended half way across the stream—perceivable half way across the stream; also brush and tree tops falling in.

Q. What effect will these bars eventually have upon the stream?

A. Why, it will certainly fill it up.

Cross-examined by Mr. LITTLE:

Q. Well, if they continue, won't they fill it to the top?

A. I should think they would in those places.

Q. Don't you think, Mr. Cummins, that there is more danger now than there was before the bed of the stream was lowered?

A. Well, I should rather think not.

Q. Now, you are sure that you went over this, and that this is no vision?

A. No, sir; this is no vision.

Q. Well, you do have visions sometimes about this matter, do you not?

Objected to by Mr. Shipman.

A. I've seen this before any of you men was called here to this business?

Q. Seen it how?

A. Just as you see anything you look at.

Q. On the ground?

A. Well, some of it on the ground, some of it in the open air.

Q. By night or by day?

A. I don't see nothing by day, generally, so far as that is concerned; I see it in God's own appointed way.

Q. What do you mean by His appointed way, Mr. Cummings?

A. As He has ever seen fit to give it to those who believe in or trust in Him.

195 Q. In plain terms I ask you, Mr. Cummins, whether you refer to visions by night or not?

A. Yes; I would refer to visions by night, given according to your faith, as God sees proper in his own appointed way.

Q. Did you communicate a vision of that kind to Mr. Hoagland recently that you had had?

A, I had some words with him, saying that he had better cease where he was, as I told him in the first place to stop such proceedings as this against the people—this oppression.

Q. Did you tell him that you had had a vision from the Almighty, and that unless they ceased this matter they would be destroyed as Pharaoh was destroyed with his host?

A. No, sir; I did not.

Re-examined by Mr. SHIPMAN:

Q. What you did and saw yesterday was a reality, and no vision, was it; as you have stated it?

A. Yes, sir; it was a reality.

Q. You say the water was high yesterday; can you give about its average depth?

A. I could not; I did not measure it; its average depth I should judge to be from four to six feet; through the swamp the water is a little roilly.

Recross-examined:

Q. What was the distance you traversed yesterday?

A. Well, I should think it was five or six miles; the creek being very crooked makes it a long journey.

Q. Well, then, you must have found one of these places every 200 yards, didn't you?

A. Some places less than 200 yards.

POLHEMUS CUMMINS.

196 Sworn and subscribed before me, this 16th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

ISAAC H. CUMMINS, a witness produced on the part of the objectors, being duly sworn, said:

I am a son of Polhemus Cummins; I am twenty-four years of age.

Q. Did you go with your father yesterday up and down the Pequest to look after obstructions?

A. Yes, sir.

Q. How far did you go?

A. We went from long bridge nearly to the steam saw-mill bridge, just below Mr. Abers'.

Q. How was the water, high or low?

A. It was high to what it was in the summer.

Q. Now please to state all that you saw in reference to the obstructions in the Pequest creek, between the points you have named, for the whole distance you have traveled.

A. I saw places where the sand of the embankments had washed in; also places where it's fell in; and I have seen previous to this

time places where it was running in; I saw yesterday stumps that had fell in; I saw logs in the creek, and a great many sand bars—fifty-three in number, that we counted; at nearly every turn there was a sand bar extending into the water, some of them visible six or eight feet, some of them that extend half way across the creek that are not visible above the water, but to be seen under; besides the fifty-three, there are many small ones that we did not count; about the banks that are falling in, I might say there are many trees in some places, not a few places either; in time there will not be much bank left in many places—perhaps no bank; the sand or bank that falls out, or caves out, some of it lays where it fell, and more of it lays in the banks or bars not far below,
197 or just at the turn, as nearly all these bars are at the turns or bends of the creek; I might say that I have waded the creek in the summer, previous to this time, and walked the banks also. I have always lived along the banks of the Pequest; in wading I have found from one foot to two feet of sand and mud in the bottom of the creek or bed; that was this past summer, and I have not waded a little of it either; there can be a better idea obtained of it in going or wading the creek in the summer, or walking the banks in the summer; now the ground is covered, or mostly covered with the snow and ice, but the places where the bad washes are down the banks are very visible; there are many places of this kind; also the banks are washed out under from one foot to five feet, by calculation, as I did not measure it, that are hanging ready to fall in, when whatever supports it gives away; also, I might say the cattle that are turned in the swamps have a path on the sand banks in some places, and when they go along, or walk along, the sand streams down these banks. About the quantity, I couldn't say, but even when I walk, or any man, these banks, this sand runs or rolls down (very fine gravel in some places) in the creek, leaving it very roilly, which shows that not a little of it runs down. My occupation is farming; I live with my father.

And being cross-examined by Mr. LITTLE, says:

I could tell the different places where the banks had washed in and fallen in by the holes where the washes are, and where they had fallen by the straightness of the bank, plainly broken; in some places the earth laid there, in others it had washed on; I didn't count all the obstructions, because those I did not count are now small and not of much consequence. They may be sometime.

Q. Were not these smaller ones visible?

A. They were plainly, but I only spoke of the large ones.

The water was roilly the day I was there; I haven't seen the water clear this winter.

Some of the bars projected above the surface of the water
198 from six to eight feet lengthwise, and six or eight or ten inches at margin of the stream, and just visible six or eight feet from shore.

Some of them extended half way across, perhaps some farther.

I could not see the bottom, standing on the banks where the water

was deepest, only where it was shallowest, and then we could feel with the sticks.

The stick I carried was a walking stick, perhaps seven or eight feet long. I carried it to protect myself from slipping down the bank. My father had one that was shorter. Neither of us went down into the water at all. We did not sound to the middle of the creek. I crossed on one or two foot logs and sounded. I think that I did not see any bars where the foot logs were, but a great deal of soft sand in the bottom. When we did sound the stream I stood on the steepest part of the bank, where it was deep. There was no necessity for sounding where it was shallow.

We could judge that these bars ran out to the middle of the stream, and then I had been there before, when the water was clear and low; that was last summer, at different times. I did not go over the whole distance from long bridge to Larrison's last summer, but I have been over many portions of it at different times.

Q. Did you ever see a ton of earth weighed?

A. No; I never saw a ton of earth weighed, but I can judge very close to what it will weigh.

Q. How much will a cubic yard of ordinary earth weigh?

A. I don't know.

Q. How much earth will an ordinary farm wagon hold?

A. It will hold perhaps 3,000 lbs. and a little over, with no lash boards. I am not prepared to say how much an ordinary one-horse cart will hold. I can look at an embankment of earth and judge nearly how much it will weigh; in a certain degree I can. I have had some experience in the moving of earth. I have hauled earth for four or five winters, two years back, for sanding or filling in low ground. The way I judged as to quantity was so
199 many wagon loads—farm wagon loads. You may understand me that there are several places in the distance I traversed yesterday in which there are several farm wagon loads of earth, and it was so last summer; perhaps not quite so bad. These sand bars are increasing all the time. Though I have seen them several times, I don't know that I can designate the places. There is one at the mouth of the ditch that intersects from above Post's Island to the main ditch. There are worse ones yet than that, but I am more familiar with that. They are very easy to be found, if any one will walk the banks of the creek. The mouth of that ditch is very much washed out, and fell in. The sand bars I noticed are on the inside of the curve, in nearly every instance; just around the curve. A person can't fail to see obstructions if they examine closely. There can't help but be a sand bar on nearly each turn. It could not carry away if it wished to, and after it once settles it stays there.

Q. You don't think, then, that these sand bars are produced by the work not being done properly?

Objected to by Mr. Shipman.

A. No, sir; I do not. If that's the case I have no knowledge of it.

Q. If you were walking on the bank how could you tell that the water had washed the earth from under it from one to five feet?

A. My father was on one side of the creek and I on the other. I could see partly before I came to them, and he would tell me; and there were sometimes holes through which I could stick my stick down to the water. The holes looked like muskrat holes—I don't know whether they were or not—and I could stick my stick right down under the bank. I could tell my stick went into the water by the end of it being wet. Perhaps this was not five feet. In some places I think it was. These places were above the mouth of Schmuck's brook, on the right-hand side of the stream as you come down. Perhaps this indicated that the stream was widening. It was on the outer curve where it was breaking under. I have seen cattle walking on the banks. Perhaps I was fifty paces from them; perhaps not. I went there just for pleasure—sometimes gunning, sometimes fishing, sometimes to take a bath. In going to that stream from my father's house I followed the ditch that intersects the main ditch. It makes a very nice path.

Q. Were any of those large obstructions on the land of Mr. George H. Ayers?

A. No, sir.

Q. Were any of them on Mr. Applegate's land?

A. No, sir; I think not; I think it was on Andrew Dennis' land, and, if James Shotwell owns a piece of land, there was on him; I am not prepared to say who owns these lands; these persons live along there.

Re-examined:

Q. Can you give about the average depth of water yesterday?

A. Perhaps it might have been four feet.

Q. You were asked if you thought that these sand bars arose from the work not being properly done. Can you tell whether they arose from that cause, or any other? You merely state the fact, do you not?

A. I do; if the work wasn't properly done I have no knowledge of it.

ISAAC H. CUMMINS.

Sworn and subscribed before me, this 16th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

DANIEL P. CHAMBERLIN, a witness produced on the part of the objectors, being duly sworn, says:

I reside at Allamuchy, and have resided there about fifteen years; I am acquainted with the lands of George H. Ayers, Moses Applegate, and Jesse Adams, and Amos Wilson.

Q. Can you state how near to their lands they commenced with this dredge?

A. I should think about half a mile from Mr. Ayers';
201 probably a quarter of a mile from Applegate—hardly that.
I do not think the drainage where they began it has effected beneficially the land of Mr. Ayers.

In order to benefit his land I should think it would be very necessary to run the dredge up there.

I have noticed his lands since the work was done; I cannot see that any effect has been produced on them; I have noticed that they have been overflown a short time ago, probably a month; we had quite a heavy rain; they were overflown from the Pequest; I don't think I can see any difference in the overflow from what it was before they cleaned the Pequest.

Trout brook overflows him some; I don't think they cleaned that out any through Mr. Ayers'; I think he did that himself; I don't think they did him any good in Trout brook; the dredge did not come up far enough, I don't think; I should judge it was three miles on the Pequest from where they but the dredge into the Sussex county line, and not quite so far, probably two and a half, on Trout brook. In order to drain the lands above where they went in with the dredge, I think they should have run it up to the Sussex line.

I couldn't tell whether they could put the dredge in Trout brook, or would have to do it by hand; it is necessary to do it one way or the other.

Cross-examined:

Trout brook in places is probably ten feet wide—in some places wider, some places not so wide; average depth I should say runs about a foot; in some places it is quite swift—in others not.

You understand me correctly, that in order to benefit the lands above the dredge ought to have been carried up to the Sussex line. The object of dredging the Pequest, I suppose, was to drain the land; of course, it was lowering the bed of the stream; if extended further up, and the bed of the stream lowered, it would certainly give them a better chance to drain their lands; I think it tended to increase the current where it was dredged; not a great deal,
202 I don't think; well, I haven't been along a great deal of it;
I don't think the current could have been increased down where it was done without increasing it above, but for a short distance only; I don't think it increased it any on Mr. Ayers'.

If the current of the stream was materially increased, I think it would tend to relieve the lands more quickly from overflow.

Q. And would not that benefit the land wherever it relieved the overflow?

A. I think it would, wherever it did relieve the overflow.

Re-examined:

I formerly lived on Mr. Ayers' land—three years; I moved there, I think, in the spring of 1865, and removed in the spring of 1868; I cannot see that the overflow is any better on his land; I have lived on Jesse Adams' farm the three years after I left Mr. Ayers';

my son lives on Adams' farm now, and has for three years; I don't think the overflow is benefited one item in his (Adams') lands; I have never been over Amos Wilson's land along Trout brook; I have on Pequest; I don't see that he is benefited there.

Recross-examined:

I live about a half a mile from Mr. Ayers' land, which is the nearest—I mean from the Trout brook—near two miles from Pequest; I have not since the drainage was finished gone on purpose down there at time of high water to see how long the overflow remained on the land.

DANIEL P. CHAMBERLIN.

Sworn and subscribed before me, this 16th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

203 Adjourned to Saturday, January 17th, 1880.

Pursuant to adjournment, parties met at 9 a. m.

ROBERT L. GARRISON, a witnessed produced on the part of the objectors, being duly sworn, on his oath saith:

I am acquainted with the lands of James W. Tims, and the lands now of Phœbe A. Wilson; these lands were formerly John Lewis's; I have made a map of those tracts of land.

Being shown map marked "Exhibit O," is asked:

Q. Does that map show the lands of James W. Tims and Phœbe A. Wilson?

A. Yes, sir.

Q. Does Phœbe A. Wilson's land appear in her name, or in whose name does it appear?

A. It appears in the name of John Lewis; I have marked it "now Phœbe A. Wilson."

Q. Describe those lands and what the different lines on the map indicate.

A. The single red lines represent the land lines—that is, the boundaries of the property. The single blue lines represent the exterior line of swamp and meadow lands, as surveyed by myself under the direction of James Boyd and Amos Hoagland, two of the commissioners. The double blue line represents the streams Pequest and Bear creek and Pine run. The dotted lines in red represent roads—public highways. The part of the map colored blue represents the lands assessed for drainage. The crooked blue line leading from Pequest through lands of Abner Wilson, John W. Vassbinder, and R. B. Cooper, to the southwesterly line of James W. Tims' farm, represents a crooked ditch, marked "D" and "E" on map. The straight double blue line running from Pine run through
lands of Jesse Wilson to the westerly line of Phœbe A.
204 Wilson's land represents a ditch, and is marked "A—B" on the map. I guess that's about all the description there is.

Q. State what lands lie between Mr. Tims and the Pequest river.

A. Lands of R. B. Cooper, John W. Vassbinder, and Abner Wilson, on the southwest; on the southeast lands of Eli Lundy, Samuel Danley, and William C. Hibler.

Q. How much fall is there from James W. Tims' land to the Pequest?

A. Three feet and near eighty-two hundredths from the point marked "C" on the map; the distance is 2,310 feet.

Q. How near does high water come to him—Mr. Tims?

A. Four hundred and seventy-one feet, that is, by the course of the ditch—hold on, I am wrong about that; it is 1,071.

Q. Do the waters of the Pequest run upon the lands of Mr. Tims?

A. No, sir; I should think not.

Q. Can his lands ever be benefited, then, by this system of drainage, as carried out by the commissioners?

A. In my judgment they cannot, for the reason that it lays so far from the stream, and in one foot and ninety-two hundredths above high water mark, and that he has sufficient fall to drain his land without any reference to the system of drainage; I have been over Mr. Tims' land quite a number of times in this running; was not boggy, save a few bogs; a very few, I think.

Q. Take "Exhibit F," on the part of E. Simanton, as it is there, and tell us whether, in your judgment as surveyor, and from your knowledge of the lines, whether Mr. Tims' land is embraced within the bounds of the geological survey.

A. In my judgment it is not.

Q. Give your reasons.

A. It lays in what I should call the Pine Run swamp or tract, and could be drained in Pine run full as well, or better, than
205 in Pequest, with the exception of some two or three acres lying at the southerly corner of his farm.

Q. Take the two courses in this Exhibit "F," on the part of E. Simanton, as follows: "Thence northwesterly along the west side of Bear Creek meadow for one mile; thence along the margin of said meadow and across the creek and down along the easterly margin of the meadow to and along the extremely crooked margin of the same to the long bridge," and state whether those are the only courses that can apply to the land of Mr. Tims, and whether either of the courses will bring his land within the lines of the geological survey, as set out in that notice, Exhibit "F."

Objected to by Mr. Little.

A. They are the only lines that could possibly affect his lands, and in my opinion they were not intended to embrace the lands of Mr. Tims, and do not, I think.

Q. State your reasons why they do not.

A. Because Mr. Tims' land does not lie on Bear creek, and are so far from Pequest that I think they should not be embraced in the survey.

Q. Take the first course there I have given you in the former

question—running along Bear creek for a mile; will that reach Mr. Tims'?

A. That creek don't run in the direction of Mr. Tims' at all.

Q. Well, take the second course; will that touch him?

A. In my judgment it does not.

Q. Take the lands of Phœbe A. Wilson, formerly Lewis, and state whether they are within the geological survey, or not.

A. They are not, for the same reasons that I have given before—their outlet from the drainage being in Pine run.

Q. Whose land lies next to that of Phœbe A. Wilson?

A. Lance, formerly Jesse Wilson's, on the northwest.

Q. Are they assessed for benefits by the commissioners, or are they left out?

206 Objected to by Mr. Little, on the ground that the assessment speaks for itself.

A. They are left out.

Q. Are the reasons the same for leaving Phœbe A. Wilson's out as for leaving Jesse Wilson's land out?

Objected to by Mr. Little.

A. Yes, sir; they are the same.

Q. State how far Phœbe A. Wilson's land is from the Pequest, and how high above it, and whether the drainage made by these commissioners can in any way benefit her lands?

A. It is distant at the nearest point about forty-five chains, in a straight line; in yards, 990. I have no level from Pequest to her lands. It is about the same height above the Pequest as James W. Tims; I can tell by the eye. The drainage made by these commissioners, in my judgment, cannot in any way benefit her lands because they lie so far from Pequest creek, and so far above it, and her natural drainage is to Pine run, which stream is not benefited at her point of outlet by the clearing of Pequest.

Q. You spoke, Mr. Garrison, of the line you had run, under the direction of Judge Boyd and Mr. Hoagland; state if you ran for one of them one line, and how that affected Mr. Tims and Phœbe A. Wilson, and whether the line was afterward changed, and how it came to be changed?

A. I ran the first line under the direction of Judge Boyd, one of the commissioners; that line ran through lands of R. B. Cooper, striking the south corner of James W. Tims' farm; it did not take in any of Phœbe A. Wilson's or James W. Tims'; afterward Amos Hoagland took me up there, and the line was changed, so as to take in the lands of Phœbe A. Wilon, James W. Tims, and others; this was a short time afterwards; I can't tell exactly; Mr. Hoagland was the only commissioner with me.

Q. Is the line run by you and Judge Boyd designated on the map "Exhibit B" by the letter H?

A. It is a full blue line.

207 Witness being shown "Exhibit H," is asked—

Q. State what lands lie between Mr. Tims and the Pequest river.

A. Lands of R. B. Cooper, John W. Vassbinder, and Abner Wilson, on the southwest; on the southeast lands of Eli Lundy, Samuel Danley, and William C. Hibler.

Q. How much fall is there from James W. Tims' land to the Pequest?

A. Three feet and near eighty-two hundredths from the point marked "C" on the map; the distance is 2,310 feet.

Q. How near does high water come to him—Mr. Tims?

A. Four hundred and seventy-one feet, that is, by the course of the ditch—hold on, I am wrong about that; it is 1,071.

Q. Do the waters of the Pequest run upon the lands of Mr. Tims?

A. No, sir; I should think not.

Q. Can his lands ever be benefited, then, by this system of drainage, as carried out by the commissioners?

A. In my judgment they cannot, for the reason that it lays so far from the stream, and in one foot and ninety-two hundredths above high water mark, and that he has sufficient fall to drain his land without any reference to the system of drainage; I have been over Mr. Tims' land quite a number of times in this running; was not boggy, save a few bogs; a very few, I think.

Q. Take "Exhibit F," on the part of E. Simanton, as it is there, and tell us whether, in your judgment as surveyor, and from your knowledge of the lines, whether Mr. Tims' land is embraced within the bounds of the geological survey.

A. In my judgment it is not.

Q. Give your reasons.

A. It lays in what I should call the Pine Run swamp or tract, and could be drained in Pine run full as well, or better, than
205 in Pequest, with the exception of some two or three acres lying at the southerly corner of his farm.

Q. Take the two courses in this Exhibit "F," on the part of E. Simanton, as follows: "Thence northwesterly along the west side of Bear Creek meadow for one mile; thence along the margin of said meadow and across the creek and down along the easterly margin of the meadow to and along the extremely crooked margin of the same to the long bridge," and state whether those are the only courses that can apply to the land of Mr. Tims, and whether either of the courses will bring his land within the lines of the geological survey, as set out in that notice, Exhibit "F."

Objected to by Mr. Little.

A. They are the only lines that could possibly affect his lands, and in my opinion they were not intended to embrace the lands of Mr. Tims, and do not, I think.

Q. State your reasons why they do not.

A. Because Mr. Tims' land does not lie on Bear creek, and are so far from Pequest that I think they should not be embraced in the survey.

Q. Take the first course there I have given you in the former

question—running along Bear creek for a mile; will that reach Mr. Tims'?

A. That creek don't run in the direction of Mr. Tims' at all.

Q. Well, take the second course; will that touch him?

A. In my judgment it does not.

Q. Take the lands of Phœbe A. Wilson, formerly Lewis, and state whether they are within the geological survey, or not.

A. They are not, for the same reasons that I have given before—their outlet from the drainage being in Pine run.

Q. Whose land lies next to that of Phœbe A. Wilson?

A. Lance, formerly Jesse Wilson's, on the northwest.

Q. Are they assessed for benefits by the commissioners, or are they left out?

206 Objected to by Mr. Little, on the ground that the assessment speaks for itself.

A. They are left out.

Q. Are the reasons the same for leaving Phœbe A. Wilson's out as for leaving Jesse Wilson's land out?

Objected to by Mr. Little.

A. Yes, sir; they are the same.

Q. State how far Phœbe A. Wilson's land is from the Pequest, and how high above it, and whether the drainage made by these commissioners can in any way benefit her lands?

A. It is distant at the nearest point about forty-five chains, in a straight line; in yards, 990. I have no level from Pequest to her lands. It is about the same height above the Pequest as James W. Tims; I can tell by the eye. The drainage made by these commissioners, in my judgment, cannot in any way benefit her lands because they lie so far from Pequest creek, and so far above it, and her natural drainage is to Pine run, which stream is not benefited at her point of outlet by the clearing of Pequest.

Q. You spoke, Mr. Garrison, of the line you had run, under the direction of Judge Boyd and Mr. Hoagland; state if you ran for one of them one line, and how that affected Mr. Tims and Phœbe A. Wilson, and whether the line was afterward changed, and how it came to be changed?

A. I ran the first line under the direction of Judge Boyd, one of the commissioners; that line ran through lands of R. B. Cooper, striking the south corner of James W. Tims' farm; it did not take in any of Phœbe A. Wilson's or James W. Tims'; afterward Amos Hoagland took me up there, and the line was changed, so as to take in the lands of Phœbe A. Wilon, James W. Tims, and others; this was a short time afterwards; I can't tell exactly; Mr. Hoagland was the only commissioner with me.

Q. Is the line run by you and Judge Boyd designated on the map "Exhibit B" by the letter H?

A. It is a full blue line.

207 Witness being shown "Exhibit H," is asked—

Q. Point out on that where the dredge was put in the Pequest, and how far it is, by the Pequest to the upper line of the geological survey, in which the dredge was not put?

A. The dredge was put in at a point marked A on this exhibit, about ten chains or 220 yards above the long bridge; it is about three miles from where the dredge was put in to the upper line of the geological survey, as I understand it.

Witness being shown "Exhibit F," on the part of E. Simanton, and "Exhibit D," on the part of E. Simanton, is asked—

Q. State whether, by the boundaries as described in "Exhibit F," assessed for benefits described on that map, and the lot 38 on that map now owned by Aaron Van Buskirk, are within the geological survey?

A. No, sir; they are not.

And being cross-examined by Mr. LITTLE, said:

In running the exterior line, my guide was generally the line between the meadow land and upland—the wet and dry land. The reason Mr. Hoagland gave for the change of the line which I had first run, was that he thought that land was benefited, and ought to be taken in, if I recollect aright; I can't tell how long it was after I had run the line for Judge Boyd, perhaps three or four weeks; my recollection is that I had finished the survey around the meadows as far as the long bridge, yet I can't say as to that certain; I can't tell you how he knew where I had run that exterior line; perhaps I told him; I can't say whether I did or not; I thought at the time we took in, in running the exterior lins, a considerable that was not wet; I don't think I told him before we went upon the land that the line ran for Judge Boyd was not right in my judgment.

Q. Did you go up with him for the purpose of showing him where you had run the line for Judge Boyd?

208 A. I don't recollect about that; I know I took my chain and compass along when we went for the purpose of running a new line, and did run it; perhaps I showed him the old line; I don't recollect.

Q. What do you mean by showing him the old line—on the map or the ground?

A. If anywhere, on the ground; we had no maps at that time.

Q. Have you any doubt as to whether you showed him the first line run on the ground?

A. I couldn't tell whether I did or did not.

Q. Was there anything on the ground to designate that line so that he could have found it without you showing him?

A. There were marks put up at every angle.

Q. What were those marks?

A. Generrally stakes running in the ground; one of them was an elm tree.

Q. Do you mean to say that a person could have gone upon that land without any surveyor or directions from you and found it as you ran it for Judge Boyd?

A. Yes, sir; there was several other persons could have shown it to him; when I went up with Mr. Hoagland I took chain bearers with me; my understanding was that we went for the express purpose of altering that line.

Q. Did the Boyd line, from Mr. Dickinson's land, run in the same direction, or opposite direction from the one run subsequently for Mr. Hoagland?

A. In opposite directions.

Q. Is the Pine Run a natural or an artificial drain?

A. My understanding is that it is an artificial drain.

Q. Do you know where the original outlet of Pine Run upon Bear creek is?

A. It is somewhere in the land of Jesse Wilson, I believe.

Q. You spoke of Jesse Wilson's lands not being included in this assessment; do you know why they are not included, if they are not?

209 A. I believe they were set out by the supreme court along with lands of several others.

Re-examined by Mr. SHIPMAN:

Q. Did you not have the boundaries as made by the board of managers, and were you not guided by them in running the exterior line, or did you pay no attention to them?

A. I did not have them, nor see any one else have them.

R. L. GARRISON.

Sworn and subscribed before me, this 17th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

JAMES W. TIMMS, a witness produced on the part of the objectors, being duly sworn, said:

I reside in Allamuchy township, Warren county; some of my lands are assessed for benefits by the commissioners; I am assessed on forty acres and some hundredths to the amount of eighteen dollars per acre; though assessed for benefits, I am not, in my judgment, benefited any, for the reason that I have fall enough to drain my lands without going to the Pequest for fall. The waters of the Pequest never, that I saw, came anyways near me.

I cannot see any difference in my lands from what there was before the drainage by the commissioners. My lands are not boggy lands, anything more than the few low quags that have bogs in them. These forty acres assessed are principally made up of my land that was formerly wood land. I have been cutting it off and using it for timber land and pasture land. I have about ten acres of this cleared off and ready to plow. I have been clear-

210 ing it off six or seven years anyway; I don't know but what eight; I had a contract to clear it off before the drainage; I never cleared the ditch out that runs through Mr. —— and others; the ditches run into Cooper's ditch and that carries my water off.

On the north line of my land it runs on the line between me and Phœbe A. Wilson and Jesse Adams. It runs through Caleb Dickinson's land to a slough hole into the edge of the swamp, near the Bear creek. I know the highest point where the dredge was ever put in the Pequest. I can't see that the lands above are benefited any by it. The overflow is about the same as before it was dredged above the point where the dredge was put in; I have seen Mr. George Ayers' land overflowed, since the dredge was taken out, frequently; I don't know about any other lands.

Cross-examined:

I judge of the overflow from what I see passing over the bridge in going to the post office, mill, and store. It extends upon the land at high water about as far as it used to. I go along that road in a week from once to three times.

The character of Eli Lundy's land, on the southeast of my land, is as follows:

Portions of it is high, solid land. A very small portion of the water from the southeast side of my land drains upon Eli Lundy; a part of it drains through Cooper; a part of it flows over the top of the ground through the Danly lot; a part from the northerly portion of that part assessed to me runs over the Phœbe Wilson lot, and so down through the ditch into Pine run. This ditch along the westerly line, which I say I dug, is not important to drain the lower portion of my land assessed, but it does drain a low place, a part of the ten acres that I cleared off, that used to run on Phœbe Wilson and Jesse Wilson, over the top of the ground. That marsh or bog I spoke of is, I think, on Caleb Dickinson, and spreads to Bear creek, as near as I can judge. This land of mine is a part of it—good, tillable land.

JAMES W. TIMS.

211 Sworn and subscribed before me, this 17th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

AMOS WILSON, a witness produced on the part of the objectors, being duly sworn, said:

I will be 80 years old the 12th day of next July. I have had rheumatism in my head for some time. Some of my lands have been assessed by the commissioners for benefits, they say, but I say the other way. My lands overflow now just about the same as they did before the dredging—no difference. They have not come upon me at all. My lands are not benefited at all by this drainage.

Cross-examined by Mr. LITTLE:

The water don't run off from my land any quicker than it used to. I drained my land myself. I never told Mr. Hoagland and Judge Boyd that the water ran off of my land quicker than it did before the drainage.

AMOS WILSON.

Sworn and subscribed before me, this 17th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

JESSE ADAMS, a witness produced on the part of the objectors, having been duly sworn, on his oath saith:

I have lands assessed for benefits here; they are not benefited, so far as I can see.

Q. Can they be benefited the way it is now?

A. I think not.

212 Q. Why not?

A. Well, the reason is because the banks aint high enough to dry our lands; the dredge came nowhere near me; I live way above the dredging; the only way to help me is to dredge out the bottom of the creek; then we could dry our lands; I have got over five feet fall on me to carry off the water down on my next neighbors, Nelson Gibbs and George H. Ayres; what the commissioners have done has not, I think, made any impression on my land at all.

JESSE ADAMS.

Sworn and subscribed before me, this 17th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

JAMES AYRES, a witness produced on the part of the objectors, being duly sworn, on his oath saith:

I reside in Allamuchy; I am a farmer: I am a brother to George H. Ayers; my farm joins Amos Wilson's on two sides, and Mr. Wilson's adjoins George's farm; the nearest point in his line I should think half a mile from my dwelling; I have observed my brother's lands to see whether they are benefited any by this drainage; they are not benefited any.

Q. Well, why are they not benefited? State, if you know.

A. His falls are not increased any by the dredging; the bed of the stream is not lowered, and the lands are subject to the same overlow as before the drainage.

Q. How is it with Wilson's and Adams'?

A. The same.

Q. If these persons could be benefited at all would it be necessary to reduce the bed of the stream along their lands?

213 A. It would; I am well acquainted with Pequest creek; I have traced it lately to ascertain its condition in reference to obstructions; I examined it in December last: that is, that part from my place to Post's island, which is in the middle of the swamp; I found that the bed of the stream is filling up by the banks caving in and from sediment at the bottom of the creek; at the bends, where they are abrupt, the sand would form a bar on the opposite side; I think there are points where one-third of the bed of the

creek is unoccupied at this time, caused by the water cutting in and letting it (the bank) into the stream.

Q. How long will it be before the creek is in as bad a condition as before the dredge was put in, if ever, in your judgment, from what you saw?

A. If the creek fills up for the next five years as fast as it has for the last year, I think the bed of the stream will be as high as it was originally; I have looked at Trout brook lately; it runs through my farm; it has not been dredged out at all; the bottom has not been cleaned at all.

Cross-examined:

I have been over the stream since the drainage was completed fifteen or twenty times agunning; when gunning I mostly followed the banks of the stream; I was hunting for the most part; at those times I was not making special observations, yet I have always been observing the stream; I didn't go specially in December to observe the stream; in December I was gunning; I can designate a particular point where the one-third of the bed of the creek as left at the time of the drianage is now unoccupied by water, nearly, of what was the bed of the stream after drainage, a place directly south of Eli Lundy's dwelling; it is near one-third unoccupied by water.

Q. Is the present bed of the stream, or not, as wide as it was immediately after the drainage at that point?

A. It would be owing to what you consider the bed of the
214 stream; when the water was lower a much less surface was occupied than when the water was high.

Question repeated.

A. It is now wider at that point.

Q. Where is the place that you saw the stumps?

A. I think at that point was one stump.

Q. You say you think it was wider at that place; explain; do you mean wider at the top or at the bottom?

A. The stream has cut in the north banks, at the north side, and left the south banks, of course, and the dirt that has fell in the creek has washed out below and filled in the stream below. I don't know that I can point out any other place where the bed of the stream, as left by the commissioners, has shrunk one-third, unless at the junction of Trout brook and Pequest.

JAMES AYERS.

Sworn and subscribed before me, this 17th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*Ezra Wilson.*

I am the husband of Phœbe Wilson; I know these lands that she now owns, that were assessed to John Lewis; they are not benefited one penny by this drainage, because they are too far from Pequest, and have fall enough without—all the fall they want from

Pine run to drain it; the main outlet is in Pine run; the ditch runs from this farm to Pine run, but this ditch is filled up.

And being cross-examined by Mr. LITTLE, said:

It is a little ditch; it has growed shut.

Witness says he wishes to state:

The man below me, Jesse Wilson, is out, I believe; has
215 lawed them out; his property runs 254 paces below Phœbe Wilson's property; the line which they have been talking about runs through below them.

EZRA WILSON.

Sworn and subscribed before me, this 17th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

JOSEPH C. RUNION, a witness produced on the part of the objectors, being duly sworn, on his oath said:

I live on Ellen Craig's property, adjoining Jesse Adams' farm; I have lived there twelve years this coming spring; I farm that place; I am well acquainted with Jesse Adams' land; I don't see that this drainage has benefited his lands any; it is about the same as it has always been since I lived there; the water is as high now, when there's high water, as when I first went there; I don't see but what George Ayers' land is about the same, what I have seen of it.

J. C. RUNION.

Sworn and subscribed before me, this 17th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

*John Green.*

I reside at Townsbury, Warren county; I formerly lived near Vienna; my business was farming, foundry business, and so on; I lowered the bridge at Vienna, altered by the commissioners.
216 Q. State whether you made a proposal to the commissioners to build or alter the bridge, according to their plan; and, if so, for how much?

Objected to by Mr. Little.

A. Yes, sir; I came there about the time they was selling it, or trying to sell it, and Mr. Boyd asked me what I would build it for, and I told him I would build it for $500; Mr. Hoagland said if he could not get it built for less than that, they would set it up; I believe I saw Judge Boyd the next morning, and he told me it was not sold; I saw Ed. Bulgin and he told me it was sold; then I saw Mr. Hoagland; I went down along the creek, and he said it was sold; he didn't say what it was sold for; I didn't ask him; I saw

Mr. Boyd some time after, and I understood him it was sold for six hundred dollars; I could have built it for five hundred—a little less.

And being cross-examined:

I am sure Mr. Hoagland was by when I told Judge Boyd I would take it for $500; they stood together on the bridge; Page & Co., Mr. Bulgin, and Creager built it; Page & Co. dug it out; Creager did the stone work, and Bulgin found the lumber.

Q. If you understood that it was going to be set up, why didn't you stay there?

A. It wasn't a going to be set up that night; I come there just about as they were parting to go home; I went early the next morning, and met Mr. Boyd, as I have stated, and then Mr. Hoagland, as I have stated.

JOHN GREEN.

Sworn and subscribed before me, this 17th day of January, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

217 Counsel for objectors offered in evidence the deposition of Dr. J. Marshall Paul, taken before Samuel Sherrerd, Esquire, supreme court commissioner, in the suit of Mary V. Wurts, objector, and Amos Hoagland, James Boyd, and William L. Johnson, commissioners, in the supreme court of judicature, in the State of New Jersey, subject to objections for the present.

The counsel for the objectors offered in evidence a certified copy of the record of the judgement of The Crane Iron Company, entered July 5th, 1877, marked Exhibit "P." Also the "A" certified copy of the record of the judgment of Mary V. Wurts against the commissioners, entered July 5th, 1877, marked Exhibit "Q."

Also a certified copy of a record of a foreclosure of mortgage, in a suit in which Israel Gibbs was complainant and Selden T. Scranton and others were defendants, marked Exhibit "R."

Also all papers and maps heretofore marked as exhibits.

Depositions of witnesses taken before me, Samuel Sherrerd, a supreme court commissioner, at the office of J. G. Shipman & Son, in the town of Belvidere, on the twenty-second day of February, in the year of our Lord one thusand eight hundred and seventy-seven, in pursuance of the annexed notice. The witnesses being sworn and their testimony being taken down in writing by me, and subscribed by them in my presence, and in the presence of J. G. Shipman & Son, attorneys of the exceptants, no person appearing before me to represent the commissioners, though due and legal service of a copy of notice is enclosed thereon by their attorney.

S. SHERRERD,
*Supreme Court Commissioner.*

Dr. J. MARSHALL PAUL sworn:

I reside in Belvidere.

Q. Are you acquainted with the Great Meadow lands now undergoing drainage?

218 A. I was very well acquainted with them; I have not been up there very recently.

Q. Were you acquainted with the lands now owned by Mrs. Mary V. Wurtz?

A. Yes, sir.

Q. When did you first get acquainted with them?

A. About 1829.

Q. Have you had any interest in those lands; and, if so, when did you become interested in them?

A. I inherited one hundred acres belonging to my father since 1800, I think, the balance I purchased about 1847 or '8, I think; some of them I purchased from Mr. Robert L. Garrison's father.

Q. Did Mr. Charles S. Wurts, the husband of Mrs Mary V. Wurts, afterwards become interested with you in these lands; and, if so, about what date?

A. I think it was something near 1855, possibly something more or less, somewhere in that neighborhood.

Q. When did you part with your interest to Mr. Wurts?

A. It was about 1850 or 1862.

Q. State if, while you were the owner of the land in common with Mr. Wurtz, you made any effort to drain the land, or any part of it?

A. I had drained.

(Being shown Exhibit "A," on the part of Mrs. Wurts, is asked):

Q. Will you please to state the fall from the exterior line, as shown on this map, down to the high-water line, as shown on the map, on the northwest side of the Pequest?

A. I cannot say very definitely; I would say from six to four feet; the water ran off very rapidly down the ditch we dug down there.

Q. Please to state whether, in your judgment, the lowering of the bed of the Pequest river, on the northwest side, from a foot to a foot and a half, as is proposed by the commissioners, would at all

219 affect the lands between the exterior line and the high-water line, as shown on the map.

A. It would not, unless in a very high flood, and then only temporarily; it would not affect it as to drainage at all.

Q. Please to state, if you can remember, the fall from the exterior line on the southeast side of the creek on Mrs. Wurts' land, as shown on the map, to the high-water line on the same side.

A. I know there was a fall of ten feet in the ditch, but how far down it that ten feet extended I cannot tell, but I knew it carried the water off freely.

Q. State whether, in your judgment, the lowering of the Pequest from a foot to a foot and a half, as proposed by the commissioners,

would affect these lands on the southeast side between the exterior line and the high-water line, as shown on the map?

A. I think it would not

Q. State, Doctor, what ditching you did on these lands on the southeast side of the Pequest?

A. We cut the large main ditch, commencing at the needle mill thereon, as shown on the map as Polhemus Cummins' corner, running in about an easterly course so far that the water all ran off to the Pequest; the ditch did not require to be cut all the way to the Pequest, but the water all ran off, so that we were not annoyed with the water; we also cut a number of small lateral ditches; we did not think it was necessary to do anything to the creek to affect the drainage of these lands.

Q. On the southeast side of the Pequest, then, you had no ditch running to the Pequest from those lands?

A. No, sir; not that I remember.

Q. What effect had the digging of these ditches on the southeast side upon these lands?

A. It had the effect to carry off the stream of water from the well and any spring from the hillside, and prevent it from spreading on the land; it usually dried the land, except in a great rain, the same as on any other land.

220 Q. Did it drain the lands sufficiently to render them capable of tillage?

A. We did not cultivate the land on this side for crops, as we wanted the hay; it was, however, dry enough to plow, and on the northwest side we did cultivate the land in grain; we were only in a state of progress, and did not complete our designs.

Q. What was the size, giving width and depth, of the main ditch you cut on the southeast side of the creek?

A. I think it was 8 or 10 feet in width where it received the water from the creek, and about 3 or 4 feet in depth up there; the rapid water where there was a current would cut it deeper; as we went towards the creek we made it narrower.

Q. If those ditches that you made there on the southeast side had been all kept open, would they have drained the land sufficiently for grazing, hay-making, and agricultural purposes?

A. If they had been kept open, and a few other cross ditches been made, which we intended to have made, it would.

Q. Please to state what ditches you made on the northwest side of the Pequest.

A. I think we cut three large ditches from the verge of the meadows to the Pequest; also, those ditches and cross ditches, eight squares being effectually drained, reaching down to about the high-water line, as marked on the map; the waters of the Pequest never affected these lands at all; there were ninety-six acres thus drained.

Q. Did you cultivate any part of this ninety-six acres; if so, what crops did you cultivate on it, and was it before or after there was any improvement made in the Pequest?

A. I cultivated crops of corn, oats, potatoes, field turnips, and

timothy on twenty to thirty-six acres, and this was done long before anything was done to the Pequest at all; I think I did so for several reasons; they were not all so good, but that was not on account of the water, but for the want of a top dressing, which
221 I should think was absolutely, after leaving the shore any distance, and where they are composed of vegetable.

Q. In ordinary times, how low would the water stand in these ditches on both sides of the Pequest?

A. I should think they were from two feet to two and a half feet, next the hills more than distance from the surface.

Q. Will you please to state whether you did anything to Pequest river; and, if so, what, and where did you do it?

A. An act of the Legislature was passed in 1857; I think in 1859, or after that, we proceeded to open the Pequest, and take out the timber from Bulgin's bridge, down near Danville, to the long bridge and above that; we took all the trees and obstructions out of the stream; an immense number, amounting to several hundred, were reported to me by the superintendent of the work; Mr. Brookfield floated down a large number of pieces of green timber from the swamp lands to Bulgin's bridge; but I never considered this clearing out the stream as essential for the draining of the lands of Mrs. Wurts, but for the benefit of the owners of the lands along the stream, except the swamp land below the high-water line, none of Mrs. Wurts' lands were benefited by it.

Q. Take the lands of Mrs. Wurts below the high water line on both sides the Pequest; please state what effect your clearing out the streams had upon them?

A. It would have the effect to improve their lands, to render them more valuable, but they would have to be ditched into the Pequest.

Q. How long before you cleared out the Pequest did you cultivate these lands on the northwest side, as you have stated?

A. Several years before.

Q. In your opinion, in following out the proposed plan of drainage, would these lands be benefited unless the same system of lateral ditches was pursued that was necessary heretofore?

A. I should think the lateral ditches would be absolutely necessary in any arrangement.

222 Q. Does the backwater from the Pequest at the high times lie long enough on the lands to injure the lands lying along the high-water line?

A. I should think not.

Q. Doctor, please to state whether, in your judgment, after these lands are drained, would they be valuable for agricultural purposes without being intermingled with other soils?

A. Not the peaty portions; I have formed this opinion from my own experience, and from reading; these peaty portions extend from the shore, I should think two-thirds of the way down to the Pequest; near the Pequest there is more soil mingled with the peat.

Q. In your opinion, what would it cost per acre for ditching, bogging, clearing up and intermingling the necessary quantity of soil with this peaty portion of the meadows, in order to make it valua-

ble for agricultural purposes, irrespective of the purchase money and of this assessment for drainage?

A. I should think it would cost $40 per acre, at least; it cost me that much or more; it cost me $15 per acre for bogging; quite $10 for ditching, I think; it would then require 200 loads of soil per acre, and that would have to be received from time to time.

Q. They have assessed Mrs. Wurts over $13,000; would it be possible to benefit her land to that extent by the proposed plan of drainage?

A. I should think not; I would be very sorry to pay anything of that kind; she has about 420 acres within the exterior line of the drainage survey that would not be benefited at all, in my opinion, as I have already stated above.

J. MARSHALL PAUL.

Sworn and subscribed, this 22d day of February, A. D. 1877, before me.

S. SHERRERD,
*Supreme Court Commissioner.*

223 *Continuation of Evidence on the Part of the Objectors.*

Parties met pursuant to adjournment at Clarendon House, Hackettstown, February 9th, A. D. 1880, at 10 a. m. Present, Messrs. Shipman and Little, of counsel.

ROBERT L. GARRISON, a witness produced on the part of Eli Lundy, being duly sworn, said:

Being shown "Exhibit O," is asked:

Q. Is Mr. Lundy's land on that map?

A. It is; about fifty-six acres of his assessed land is not overflowed by the Pequest river; at the point "F" on this map, my recollection is that the land is 198 feet above high water mark; I have not my book with me.

R. L. GARRISON.

Sworn and subscribed before me, this 9th day of February, A. D. 1880,

HENRY S. HARRIS,
*Supreme Court Commissioner.*

ELI LUNDY, a witness produced on the part of the objectors, being duly sworn, said:

I was eighty-one years old the third day of January; my land is assessed.

Q. You are assessed for benefits on 154 85-100 acres of land the sum of $3,487.30, according to the assessment of the commissioners; will the land thus assessed bring that amount in the market?

A. No.

224 Q. Could you raise that amount by mortgage on this land?

A. I think not.

Q. Can you pay this assessment?
A. No, sir.
Q. If this assessment should stand, would you have to let the land be sold?
A. Certainly; it will have to be sold if they ever get it.
Q. Can you see that this drainage has benefited your land any?
A. No, I can't see it; if it has, I can't see it.

ELI LUNDY.

Sworn and subscribed before me, this 9th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

It was admitted that notice to produce the original remonstrance, a copy of which was produced by Polhemus Cummins, and marked "Exhibit —" was given to the commissioners.

Counsel for objectors offered in evidence a certified copy of the last will and testament of Mrs. Mary V. Wurts, marked "Exhibit —."

The counsel for objectors declare their testimony closed.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

225 *Testimony in Rebuttal for Objectors.*

Pursuant to adjournment, parties met at the Clarendon House, in the town of Hackettstown, February 18th, A. D. 1880.

Isaac Cummins, a witness produced on the part of the exceptants, being duly sworn, said:

Q. How many acres of this 105 have you had under cultivation, and for how long a time, and what have you raised on it?

A. Seventy-one acres; nearly all of it twenty years and upwards; some of it as much as twenty-five years ago; I raised wheat, rye, corn, oats, buckwheat, potatoes, sugar-cane, broom corn, onions, cabbage, carrots, parsnips; that's as far as I have experimented on it; es, I had flax—excellent flax, and clover and timothy.

Q. Mr. Day, in his testimony, states that they have opened a ditch from Post's island road down to the Pequest, to what we call the "base line station 309," and they have opened the main ditch or outlet of Schmuck's saw mill brook from the lands of those over to what is called "base line station 431;" they are on the Pequest, and the water from the lands of Isaac and Polhemus Cummins can be drained off throug either one of these; besides they have lowered the bed of the Pequest about three feet, at the discharge of the old ditch, said to have been opened by Mr. Paul, and afterwards stopped up again by him; in these three ways the water can be drawn off of the land spoken of; please state whether the water can be drained from your land in the ways spoken of or whether your lands have been affected in any of the ways spoken of by Mr. Day in that answer?

226 A. My lands cannot be drained, never, by this main ditch; there is nothing that they have done that has benefited me in any way whatever in getting the water off of my land; there's an exception I'll make; there is a little strip of land, maybe ten acres, that is benefited some by the opening of the main ditch.

Q. Mr. Hoagland speaks in his testimony of a conversation that he, you, and Judge Boyd had, in which he says you called Judge Boyd's attention to the conversation you had had with him, and which you have detailed in your principal examination, and that Judge Boyd qualified that conversation by saying to you that he said to you that if it was as you said, the drainage would not benefit you a single cent, but that he had found it very different; state whether you have any recollection of any such conversation, and whether it ever took place?

A. I never saw Judge Boyd and Mr. Hoagland together at any place, and never any such conversation passed between us at no place—never.

No cross-examination.

The witness stated that he wished to make one other remark: I can never have my lands drained by running my ditches into the main ditch.

ISAAC CUMMINS.

Sworn and subscribed before me, this 18th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

POLHEMUS CUMMINS, a witness produced on the part of the exceptants, being duly sworn, testifies as follows:

Q. Mr. Cummis, your name appears among others upon a copy of a paper which has been presented here on the part of the
227 commissioners, purporting to be an application to the board of managers, to take into consideration the propriety of draining the Pequest meadows; did you ever sign that application, or authorize anybody to sign it for you, or do you know how your name got to it?

A. I did not; I did not authorize anybody; I don't know how it got there; I knew nothing further of the petition till after the law was passed.

Cross-examined:

Q. I suppose you were opposed to the application, were you not?

A. I was.

Q. Very much?

A. Very much; so much so that I spent nearly two weeks to find out the minds of the people—of the land-holders—concerning their will and disposition in regard to it, and presented in a petition to Mr. Hoagland to cease further proceedings.

Q. That petition which you speak of as presented to Mr. Hoagland is the one you produced a copy of on your principal examination, is it not?

A. I refer to that.

Q. Did you know that that petition, asking for the appointment of commissioners, was being circulated at the time?

A. Not at the time.

Q. Who is Andrew J. Cummins?

A. He is a cousin of mine.

Q. Where does he live?

A. At Vienna.

POLHEMUS CUMMINS.

Sworn and subscribed before me, this 18th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

228 GEORGE T. WILSON, a witness produced on the part of the exceptants, being duly sworn, on his oath says:

I live in Independence township; I am well acquainted with the Pequest; I have known it twenty-five years and longer; well, I have been along it lately—last fall, late in the fall; I was wading the creek, spearing fish, from Danville bridge, so-called, I believe, up above Mr. Post's, a mile, I think, and then from a mile and a half above that, I presume—as far as the dredge went up.

Q. State what observations you made, if any, in reference to the filling up of the Pequest creek?

A. Well, I saw that it had filled up from a foot to three feet at different points all the way along the stream as far as I waded.

Q. With what?

A. With sand and muck substance.

Cross-examined:

There were a good many such places; I didn't notice how many, but a good many places; I had to get out, because I couldn't get through; would mire into it; the sand was harder.

Q. Were those places principally above or below Larrison's bridge?

A. Principally above; but there were some places below.

Q. Don't you think that there were some places that were as high as four feet?

A. Well, sir, there might have been.

Q. Were not there some as high as five feet?

A. I don't know; I didn't exactly measure; I couldn't say; I am no relation to Isaac and Polhemus Cummins, that I know of.

Q. When was it you were fishing and saw these obstructions?

A. Well, I think as late as November; I won't say positive; I was there three or four times, probably, from July to November.

229 Q. How late in November?

A. I couldn't tell you; I can't say whether it was the first, middle or last.

Q. Who was with you?
A. Mr. Polhemus Cummins' son.
Q. Was he with you every time?
A. Well, pretty much.
Q. Can you tell where the largest of these obstructions was?
A. Well, not exactly; about a quarter a mile above Larrison's bridge, as it's called, near where they had a dam at one time.

GEORGE T. WILSON.

Sworn and subscribed before me, this 18th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

CHARLES STUART WURTS, a witness produced on the part of the exceptants, being duly sworn, testified as follows:

Q. Did you receive from Prof. George H. Cook his geological report to the Governor for the year 1870?
A. I did.

Cross-examined:

Q. How do you know it come from Prof. Cook to you?
A. My impression is that I wrote to him for that report.

CHARLES STUART WURTS.

Sworn and subscribed before me, this 18th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

230 *Exhibits on the Part of the Objectors.*

"Exhibit A," showing the map of lands of Polhemus Cummins and others.
"Exhibit B," showing the map of the lands of The Crane Iron Company.
"Exhibit C," showing the map of the land of Mrs. Mary V. Wurts.
"Exhibit D" is the general map showing the lands of the objectors.

"EXHIBIT E."

We, the undersigned petitioners, owners of lands in the Great Meadows, and residents near the same, of the townships of Independence, Allamuchy, and Hope township, remonstrate against the doings of the acts of the commissioners in the drainage of the Great Meadows, and do hereby notify them to discontinue their services, as we are determined to appeal to legal authorities to stop further proceedings.

Dated August 92th, 1874.

Isaac Cummins, Polhemus Cummins,
Silas Cummins, Hannah Cummins,

| | | |
|---|---|---|
| | John F. Cummins, | I. N. Blackwell, |
| | N. N. Cummins, | Sanford L. Hibler, |
| | Thomas Lynes, | Nathaniel Cummins, |
| | Christian Cummins, | Nelson Cummins, |
| | Robert Ayers, | Simon Ayers, |
| | Henry Vreeland, | Elizabeth Vreeland, |
| | James A. Swayze, | Patrick Larkins, |
| | John Dunn, | Thomas P. Frome, |
| | Benjamin C. Beers, | John Vansyckle, |
| | Daniel Leigh, | Isiah Leigh, |
| | Mary A. Green, | Elizabeth L. Post, |
| | Sarah Freeland, | Hiram Staples, |
| | Moses Applegate, | George W. Staley, |
| | Abijah Wilson, | Ezra Wilson, |
| | Catharine Long, | Aaron Van Buskirk, |
| | Abner Wilson, | Eli Lundy, |
| | William Vanhorn, | Josiah Lewis, |
| | John Lewis, | James W. Tims, |
| 231 | A. C. Cooper, | Caleb R. Dickerson, |
| | Adam Stiff, | I. C. Gibbs, |
| | I. N. Gibbs, | Amos Wilson, |
| | I. C. Runion, | C. H. Hibler, |
| | Silas Y. Lewis, | Elizabeth Z. Lewis, |
| | James Ayers, | James Shotwell, |
| | A. J. Dennis, | Samuel Drake, |
| | Abram Boss, | David V. Maring, |
| | William H. Clifford, | Stephen Hagerty, |
| | B. R. Clifford, | James E. Shaver, |
| | Huldah Batley, | B. B. Howell, |
| | William I. Roe, | Aaron Howell, |
| | John Green, | F. E. Ayers, |
| | E. Simanton, | Theodore Ball, |
| | Robert Little, | James R. Saze, |
| | Lewis Ricker, | T. F. Johnson, |
| | Jacob Lundy, | Sarah Lundy, |
| | G. W. Lundy, | John A. Wilson, |
| | I. W. Vassbinder, | C. O. Harris, |
| | Lewis Kishpaugh, | John Gibbs, |
| | George Wilson, | Isaac Stickles, |
| | Samuel H. Read, | William C. Hibler, |
| | J. P. Stickles, | S. J. Kittle, |
| | John W. Hart, | Levi Kittle, |
| | G. W. Dennis, | Sarah R. Vass, |
| | Clinton Vass, | Hesakiah Drake, |
| | Abraham Dennis, | Alfred Buckley, |
| | Lewis Youngs, | Pattrearch Welch. |

"EXHIBIT F."

*Notice of Drainage.*

Notice is hereby given that on the application, in writing, of more than five owners of separate lots of land, hereinafter described, to the board of managers of the geological survey of the State of New Jersey, the said board have examined said tract, and deemed it for the interest of the public and of the land owners to be affected
232 thereby to have the same drained; with the assistance of the State geologist, have made surveys of said tract and have decided upon and adopted a system of drainage for draining the same, and have caused a map of the same, together with the plan of drainage by them adopted, to be made, and have made a written report of the same to the supreme court of New Jersey, which map, plan of drainage, and report are now on file in the office of the clerk of said court.

Said tract of land is known as "the Great Meadows," is subject to overflow from freshets, and is low, marshy, boggy, and in a wet condition. Said tract is situate on both sides of the Pequest river, and on each side of one of its branches, called "Trout brook," in the townships of Independence and Hope, in the county of Warren, and in the township of Green, in Sussex county, in the State of New Jersey, extending by Pequest river from Vienna and Danville at the westerly end to a point in Green township, in Sussex county, about one-eighth of a mile from the line between the counties of Warren and Sussex, and by Trout brook from its mouth on Pequest river and extending to and beyond the line between Sussex and Warren counties, and embracing an area of drowned and wet lands of five thousand seven hundred and fifty-six (5,756) acres. The boundary of said tract is plainly marked upon the surface, at the meeting of the flat and boggy meadow or swamp with the upland, and may be traced. Beginning at the edge of the meadow in front of the Presbyterian church at Danville, thence bearing northwesterly in an irregular line for a mile and a half; thence northwesterly along the west side of Bear Creek meadow for one mile; thence along the margin of said meadow and across the creek and down along the easterly margin of the meadow to and along the extremely crooked margin of the same to the road across long bridge, which is distant five miles and one-quarter of a mile in a straight line from the beginning; thence northeasterly along the northwest margin of the meadow a distance of two miles and three-quarters of a mile to a point one-eighth of a mile beyond the division line between Warren and Sussex counties, when the meadows end and the boundary line
233 meets on the Pequest river; thence across the said river and down the southeasterly margin of the meadows in a southwesterly direction two miles and to the margin of the meadow on Trout brook; thence northeasterly along the northwesterly margin to the meadow on Trout brook one and a half miles to where the margin of the meadow meets the brook; thence across said brook and down the southeasterly margin of the Great Meadows in a crooked line which bears generally southwest four miles and one-eighth of a

mile to the road crossing to Young's Island; thence southeasterly three-eighths of a mile along the meadow margin; thence southwesterly along the edge of the meadows a distance of three miles and seven-eighths of a mile to the steam mill on the Pequest river, and thence continuing across the Pequest in the same direction and along the meadows five-eighth of a mile to the place of beginning.

Included within the foregoing boundaries are three islands or knolls of hard ground, viz: Trimmer's Island, Post's Island and Young's Island, the areas of which are not included in the contents of the tract hereinbefore stated.

The said system or plan of drainage is to cut a channel thirty feet wide through the three reefs of rock near Vienna, reducing the bottom of these cuts to the grade line represented on the profile.

This will lower the reef at Vienna bridge three feet, the reef at the bridge next above four feet and three-tenths of a foot, and the reef at the stone mill bridge five feet and six inches. Also to lower the bed of the Pequest river between the reefs to the same grade, and and to bring it also to the full width of thirty feet. After this is done the streams through the Great Meadows must be cleared of trees, stumps, logs, brush, and other temporary obstructions which now retard the current of the water in the river. And to make the work complete it will be necessary to lower the sand and mud bars and banks in the channel so as to give it capacity enough to carry the stream within its banks. This to be done as the effects of the first improvement show it to be necessary.

234 And the said the board of managers of the geological survey hereby give notice that on the first Thursday of November next, at ten o'clock in the forenoon, or as soon thereafter as the court can attend to the same, at the State-house, in the city of Trenton, they will apply to the supreme court of the State of New Jersey to appoint three commissioners not interested in the said lands to be drained to superintend and carry out the drainage of the said tract of land according to said system or plan, and pursuant to the act entitled "An act to provide for the drainage of lands," approved March 8th, 1871.

By order of said board:

WILLIAM M. FORCE, *Secretary.*

Dated September 13th, 1872.

"EXHIBIT G."

*Objections. Filed June 8th*, 1876.

It appearing by the report of the commissioners that certain lands of Mrs. Mary V. Wurts should contribute to the expenses of said drainage, and that said lands are to be benefited or intended to be benefited thereby, and that assessments for such supposed benefits have been made as follows:

| | |
|---|---|
| No. 41, 276 acres | $5,168 00 |
| 60, 398 88-100 | 8,079 84 |
| | $13,247 84 |

The said Mary V. Wurts presents the following objections to the report: That her said lands should contribute to the expenses of said drainage, and that said assessments should be levied thereon, viz:

Because the assessments are improperly made;

Because the said sum, so as aforesaid assessed, are not distributed fairly among the said several tracts of land, and are not distributed among the said several tracts of land in proportion to the benefits derived, and to be derived from said drainage by the said tracts of land;

235 Because the drainage of the said meadows, according to the plan adopted, is no benefit to the lands of this objector; and

Because the amount assessed against the tracts of land of this objector is greatly in excess of the amount of benefit which said tracts will receive, if they receive any.

Because said report is in other respects improper and irregular.

June 8, 1878.

MARY V. WURTS, *Objector.*
Per GEO. M. SHIPMAN, *Att'y.*

Because the law is unconstitutional.

GEO. M. SHIPMAN, *Att'y.*

New Jersey Supreme Court. June Term, 1877.

In the Matter of the Commissioners to Drain the Pequest River. On Objection made to the Assessment made by the said Commissioners. Objections filed by Mary V. Wurts.

The court having heard the arguments of counsel, and duly considered the objections filed by Mary V. Wurts, to the assessment made by the commissioners on the lands of the said Mary V. Wurts, in the county of Warren, and the court being of opinion that the assessment made by said commissioners against the lands of the said Mary V. Wurts is illegal, it is ordered that said assessment be set aside—made void, and for nothing holden—without costs.

Entered July 5, 1877. On motion of—

GEO. M. SHIPMAN. *Att'y, &c.*

New Jersey Court of Errors and Appeals. March Term, 1879.

AMOS HOAGLAND, JAMES BOYD, and WILLIAM L. JOHNSON, Commissioners, Plaintiffs in Error,

*vs.*

MARY V. WURTS, Defendant in Error.

On writ of error to supreme court.

This cause having been argued by Mr. Jacob Vanatta, for
236 the plaintiff in error, and by Mr. J. G. Shipman, for the defendant in error, and the court having held the same over for advisement until the March term (1879) of said court; and now the

said court being of the opinion that the judgment of the said supreme court should be affirmed: It is thereupon, on this seventh day of April, A. D. 1879, ordered, adjudged, and decreed that the judgment of the supreme court in the above-stated cause be, and the same is hereby, in all things affirmed, with costs; and it is further ordered that the record and proceedings be remitted to the said supreme court, to be proceeded on according to law.

On motion of—

GEO. M. SHIPMAN,
*Attorney of Defendant in Error.*

"EXHIBIT L."

(Being a deed from Benjamin F. Howey, sheriff, to Aaron Van Buskirk, dated June 23d, 1879, for one hundred and twenty-five acres of land, formerly Selden T. Scranton's land.)

"EXHIBIT M."

HACKETTSTOWN, *Nov. 6th*, 1826.

To Messrs. WM. VLIET and others.

GENTLEMEN: Agreeable to your request, I have made an estimate of the probable expense requisite to drain the Big Meadows, by diverting the course of the Pequest, and excavating a channel for the same through near the church.

The following is an estimate:

| | |
|---|---|
| Total distance, 65 chs. 50 links, commencing near the church, and running south 32 chs.—9,411 44-100 cubic yds., at 8 cts | $752 91 |
| From thence to the deep cut, including part of deep cut, 25,600 yds., at 10 cts | 2,560 00 |
| The remainder of deep cut, 30,585 yds., at 12½ cts | 3,823 12 |
| | $7,136 03 |
| For contingencies and unforeseen expenditures | 500 00 |
| Total am't | $7,636 03 |

237 The above is calculated for the bottom of the channel to be 10 feet wide, and the banks to slope on an angle of 45 degrees.

If I am not deceived in the quality of the excavation (which the surface indicates), the above estimate, I think, will be more than sufficient to complete the enterprise. All of which is respectfully submitted.

Yours, &c., EDWI. A. DOUGLAS, *Engineer.*

"EXHIBIT N."

(Extract from the report of Prof. Cook for the year 1870.)

By reference to the map of the Great Meadows, it will be seen that very much cutting can be saved by straightening the Pequest

in many places between the steam-mill bridge and long bridge. The area of the swamp is about 5,500 acres. The soil is a black muck. The figures on the map denote the depth of the muck down to a sand or gravel bottom. When properly drained, the Great Meadows will be far the most valuable land in that section of country.

The chief expense of this improvement will be in cutting through the rocks at the reefs, which may cost $20,000.

"EXHIBIT *Na.*"

(Annual report of State geologist for the year 1870.)

"EXHIBIT O."

(Last will and testament of Mrs. Mary V. Wurts.)

"EXHIBIT P."

*Objections. Filed June 8th*, 1876.

238 It appearing by the report of the commissioners that certain lands of the Crane Iron Company should contribute to the expenses of said drainage, and that said lands are to be benefited, or intended to be benefited thereby, and that assessments for such supposed benefits have been made as follows:

| | |
|---|---|
| No. 34, 27 acres | $540 00 |
| 35, 38 $\frac{47}{100}$ acres | 692 46 |
| | $1,232 46 |

The said The Crane Iron *Crane* presents the following objections to the report that their lands should contribute to the expenses of said drainage, and that said assessments should be levied thereon, viz:

Because the said assessments are improperly made.

Because the said sums, so as aforesaid assessed, are not distributed fairly among the said several tracts of land, and are not distributed among the said several tracts of land in proportion to the benefits to be derived from said drainage by the said tracts of land.

Because the drainage of the said meadows according to the plan adopted is no benefit to the lands of these objectors.

Because the amount assessed against the tracts of land of these objectors is greatly in excess of the amount of benefit which said tracts will receive, if they receive any benefit.

Because the said report is in other respects irregular and improper.

June 8, 1876.

THE CRANE IRON COMPANY,
Per GEORGE M. SHIPMAN, *Attorney.*

Because the law is unconstitutional.

GEORGE M. SHIPMAN.

New Jersey Supreme Court. June Term, 1877.

In the Matter of the Commissioners to Drain the Pequest
239 river. On Objections made to the Assessment by the said Commissioners. Objections filed by the Crane Iron Company.

The court having heard the arguments of counsel, and duly considered the objections filed by the Crane Iron Company to the assessment made by the commissioners on the lands of the said Crane Iron Company, in the county of Warren, and the court being of opinion that the assessment made by said commissioners, against the lands of the said Crane Iron Company, is illegal, it is ordered that said assessment be set aside—made void, and for nothing holden —without costs.

Entered July 5, 1877. On motion of Geo. M. Shipman, att'y, &c

New Jersey Court of Errors and Appeals. March Term, 1879.

Amos Hoagland and others, Commissioners, Plaintiffs in Error,
*vs.*
The Crane Iron Company, Defendant in Error.

On writ of Error to Supreme Court.

This cause being in all things similar to the case of Amos Hoagland and others *vs.* Mary V. Wurts, and it being understood between the respective attorneys that the result in this case should depend upon the decision of the court in the case of Amos Hoagland and others *vs.* Mary V. Wurts, and the judgment in that case being affirmed—

It is ordered that the judgment in this case be affirmed with costs, and that the record and proceedings be remitted.

On motion of George M. Shipman, attorney of defendant in error.

"Exhibit R."

Decree of the court of chancery in a cause in which Israel Gibbs was complainant and Selden T. Scranton, Amos Hoagland and others, commissioners of drainage, were defendants.

240 New Jersey Supreme Court.

Crane Iron Company, Charles S. Wurts, and others, Exceptants and Amos Hoagland and others, Commissioners.

On exceptions to Assessment.

241 *Evidence on the Part of the Commissioners.*

New Jersey Supreme Court.

Crane Iron Company, Charles S. Wurts, and others, Exceptants, and Amos Hoagland and others, Commissioners.

On exceptions to Assessment.

Depositions of witnesses on the part of the commissioners in the

matter of exceptions filed by the Crane Iron Company, Charles S. Wurts, Robert L. Kennedy, and others to the assessment made by Amos Aoagland, James Boyd, and William L. Johnson, commissioners of drainage, taken in the presence of Theodore Little, of counsel for the commissioners, and Jehiel G. Shipman of counsel for exceptants, on the 9th day of February, 1880, pursuant to adjournment.

242 The counsel on both sides agreed that the testimony of Coursen H. Albertson, on pages 85, 86, 87, 88, 89, and 90 of the printed book in the case of these same commissioners and Mary V. Wurts and others, in the New Jersey court of errors and appeals, shall be taken as his testimony in this cause.

The same agreement was made respecting the testimony of Nelson H. Banghart on pages 76 to 84, inclusive, of the same book.

Both of the said last-mentioned witnesses were present, ready to be sworn.

EDGAR V. KENNEDY, a witness produced on the part of the commissioners, being duly sworn, said:

I live up in Sussex, about half a mile above the line, between Sussex and Warren; I live right in sight—two or three hundred yards of the Pequest; I have lived where I now live all my life, and am about thirty-five years old; my business for the last ten years has been milling; my mill stands on the Pequest.

I have seen the stream and land, but never took particular notice of the effect of the stream upon the land there.

The stream has been in the habit of overflowing its banks since I lived there, in a freshet.

The low land is not very wide up by us, and overflows the most of it.

Since the work has been done by the commissioners of lowering the bed of the stream, I have noticed a difference in the time the water remains on those lands, but how much difference I wouldn't exactly say.

For the last few years I don't think the water has stayed with us as it used to. From what cause I couldn't say; whether not so high water or not I couldn't say.

I couldn't give an estimate of the difference in time.

It went off quite a little sooner. We have taken out the logs below and harrowed the creek and race. I mean by harrowing—taking a team and harrow, ane two of us getting on it and driving up and down the bed of the creek. I don't know how much that had to do with it.

243 On being cross-examined, said:

I live from two to two and a half miles from Mr. George H. Ayres; that is just a guess; the width of the meadows up where I am is different; quite narrow in some places; from three to five hundred yards, I think.

Some parts of this land is overflowed in times of high water, yet;

I notice more right below the mill than any other place, because as it overflows there it backs up on the wheel and affects our power.

I can't tell how long it lies on the land at a time.

The only difference I have seen is that for the last two years the water has run off sooner.

I couldn't say whether the freshets for the last few years have been as severe as formerly.

I have seen a fish basket at Andrew Dennis', in the Pequest, last summer, near long bridge, three miles from us.

E. V. KENNEDY.

Sworn and subscribed to before me, this 9th day of February, A. D. 1880.

HENRY S. HARRIS, *M. C. C.*

WILLIAM VREELAND, a witness produced on the part of the commissioners, being duly sworn, said:

I live at Danville; I am forty-six; I have lived in that neighborhood for this last thirty-five years; my father's name is Henry Vreeland; he owned lands in the Great Meadows; doesn't now; he did during these draining proceedings; they lie back of Danville and adjoining property of Aaron Buskirk, Peterson Frome, and William Harvey and Lewis Martimus' property. My father's lands were about three-quarters of a mile from the river.

Mr. Van Buskirk's, Mr. Shipman's, Mr. Banghart, and Mr.
244 Merrell's lands lie between my father's and the Pequest. Mr. Banghart and Mr. Merrell and Mr. Cummins on one side of the ditch, and Mr. Shipman's and Mr. Van Buskirk's on the other.

My father used those lands on the lower part for pasture only; on the upper part he raised corn and timothy. There has been a change since this drainage work has been done in those lands. Before the land was very wet, miry; since it has dried off, and we have been able to plough it, where, before, we could hardly get our cattle in.

A part of that which was so wet and miry, fifteen acres has been cultivated this past year.

We sowed it with timothy this past year. One lot we raised corn on; a couple of acres.

The crop of corn and timothy was very good; had an enormous crop of corn on that we had in corn.

I own this land now; I know Ephraim Simanton; I have talked with him some, at the time I was at work on the banks, in '77 or '78, about the effect of the drainage upon his land; I think it was in '77.

He allowed it was a very good thing for his land. He didn't know whether it would dry it for sure or not.

I have recently been along the Pequest to examine it. Was along with Mr. Day, Aaron Howell, and Mr. Hoagland some three weeks ago.

We went up to the long bridge, where they commenced, come

down to Bulgin's bridge, and went from Bulgin's bridge over a part of Mr. Simanton's. I thought we made a very careful examination of the stream. The object was to see whether there were any bars and whether the width of the stream was affected. The examination was conducted in this way: Part of us were on one side and part on the other. We did not find any bars that affected the channel; around the short curves there were these bars of water quick-sand that a freshet would sweep away, but none that affected the current.

I don't think the channel was narrow at any point, except at two points where a stump had slid in, and measuring from the top of that stump across the channel would vary, perhaps, about six inches.

245 The character of the soil where my timothy and corn were raised was a black muck like.

This reclaimed land was a part of the Goose pond tract. That was the name of the tract; it was called so on account of its being so wet—overflowed with water all the time.

And being cross-examined, said:

We did some ditching on this; ditched all around it; ran it into the main ditch that runs up from the Pequest. It lies along that ditch about one-quarter of the way of the ditch. The outlet of all my ditches runs in there.

I can't tell how much I expended; I don't think it cost over three dollars an acre at the outside; couldn't tell exactly, as I hired some by the rod and some by the day.

The size of the main ditch from the river up in the first part is eight feet wide, three feet and a half deep, and is two feet in width on the bottom.

Before I ditched my land off some of it was dry enough to plough. The whole tract is 32 acres; about 3 acres of it back from the ditch on the back side was dry enough to plough before I ditched.

I didn't cover this land so very thick with manure. Where I put the corn it just had a light coat; a very light coat of manure.

I raised this corn last summer. This manure had not been laying in some time; we put it on along in the winter at different times; broke it up last fall, a year ago.

The creek, the day I was along it, was very wide; not so high as I have seen it; it would average about three feet; could see the bottom the most of the way; I can't give the day of the month I was there.

I was mistaken in saying that Mr. Hoagland was along that day. No one was along, except Mr. Day, Mr. Howell, and Mr. James Ayres, part of the way; Stewart Ayres' son; he was with our company; not just looking on.

246 We measured half a dozen times, I should think, above long bridge, where they commenced a couple of places and down below; it measured thirty-six feet; sometimes more, sometimes a little less; it would average thirty-six feet; we measured on the bottom; I think it's wider now at the top than when it was commenced; the banks are in very good condition.

Q. Do you say there are no sand bars in the stream at all?

A. No; there are no sand bars in to check the current of the water at all.

Q. You know this Crane Iron Company's land—those two lots there; are they benefited by this drainage?

A. I don't think they are; they haven't got any outlet.

Re-examined by Mr. LITTLE:

What I mean by the Crane Iron Company having no outlet is that that main ditch, called the Hoagland ditch, don't reach up to the Crane Iron Company's land; if it did it could be all ploughed without any trouble; what they need is to ditch their land so as to bring their water into that main ditch; the ditch went through places that you couldn't wade through any time of the year that are now dry.

The day we examined the stream I did not perceive much difference in the current; some places a very little, but about one thing; I guess it would average one thing all the way through.

I have noticed the channel below Larrison's bridge; it does not, I think, show any signs of filling up.

I have noticed it as far as the Beacon run, and down below there; I have been over it several times.

Since the drainage I have never seen the water in freshets overflow the road.

I remember a stone bridge a little north of the Larrison bridge; I have never, since the drainage, seen the water overflow the road at the bridge.

247 Before the drainage I have seen it there belly deep to the horses, and also down here by the Vienna bridge I have seen it belly deep to the horses.

I have seen it flood the road near the Danville church. That was a frequent thing. Almost every spring since the drainage there has been no water over the road at either of these places.

Recross-examined:

Above the Bulgin bridge, before the drainage, I have seen it overflow the road most every year. Once in awhile it wouldn't. I live probably a mile or a mile and a half from that bridge.

I did not go there a purpose to see since the drainage. There have been but very few freshes, I guess, when I haven't been there. I guess I've been there pretty near every freshet we've had.

I live from the Vienna bridge, I would think, a mile and a quarter. I see that every time there is a freshet, and go there a purpose, but have business every day.

I was with Mr. Fagin, as a contractor under him, for three months; I think it was the second contract. Cleaned up above the Bulgin bridge as far as Post's spring run.

WILLIAM VREELAND.

Sworn and subscribed before me, this 9th day of February, A. D. 1880.

HENRY S. HARRIS.

AARON HOWELL, a witness produced on the part of the commissioners, being duly sworn, on his oath said:

I live at Vienna; I will have lived there eight years in the spring; my age is sixty-seven; my business is farming; I am not doing much of anything now.

Since I have lived there I don't think I have ever seen the water overflow the road at the Danville church.

I was with Mr. Day and Mr. Vreeland when we examined the stream, some three weeks ago.

248 I formerly lived in Independence township, on the meadows, on what is called the Howell farm; where the mine is.

We began our examination on the day mentioned above the Long bridge, where they commenced dredging, at the outlet of Trout brook. We continued it down to Bulgin bridge and made frequent measurements of the stream. We found no obstruction in the stream of any account. It appeared to be very clear. Mr. Day and I were on one side and Mr. Vreeland on the other. We measured with a string, which we measured with a tape line. I didn't notice any signs of the channel filling up, except along the sides once in awhile at a short turn in the creek on one side.

And being cross-examined, said:

The day we were along there was the 20th of January last. Mr. Day requested me to go along. The water didn't look to be so very deep that day. It was, I should judge, about three feet most of the way. Some places, where it had washed out, it would be a little deeper. I don't know that that is such a good depth for the Pequest. Is was higher, of course, than last fall.

We could not see the bottom all the way; could, except some places where it was washed out and deeper than other places.

We got up to Long bridge about twelve o'clock, and it took us till night to come down to the Bulgin bridge.

We measured six or eight times. Mr. Day and Mr. Vreeland held the tape. They tossed the tape-line across.

We found it measured from thirty to thirty-five and thirty-six feet. That was at the top of the water.

I couldn't tell whether the creek has narrowed or widened itself since the dredge went through. We went from Larrison's to Bacon run before we started to go up to Long bridge. We saw no obstructions from Larrison's to Bacon run. From Bulgin's bridge to Long bridge the stream is quite crooked. Wherever there was a turn there would be a bar on one side.

249 I didn't see any stumps down in the stream. We saw one or two that leaned down in the water—at the top of the water.

AARON HOWELL.

Sworn and subscribed before me, this 9th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

GEORGE H. COOK, a witness produced on the part of the commissioners of drainage, being duly sworn, on his oath saith:

I reside at New Brunswick, and am the State geologist of New Jersey, and have been since 1864. I was in the geological survey earlier than that—in 1854.

The law makes me the advisor of the board of managers of the geological survey, and I acted as such in the adoption of this system of drainage of the Great Meadows. I saw the work frequently while it was being done. I have seen it since its completion.

Q. Has the work done by the commissioners or not been done in accordance with the system adopted by the board of managers?

(Objected to, as calling for the opinion of the witness on the whole work, on which he can hardly be an expert, and as irrelevant.)

A. It has.

Q. Has or not, according to your examination, the work contemplated by the plan or system adopted by the board of managers been completed?

(Objected to, on same grounds.)

A. It has, in my judgment.

Q. Since its completion, has it or not been inspected and approved by the board of managers?

(Objected to, because it ought to be proved by the record of the board, and because irrelevant.)

250 A. It has been approved, to my knowledge; and I saw one of them inspecting it. The others I did not see, of the committee that the board appointed to attend to this work.

Q. What, Doctor, was the leading feature of the plan or system adopted by the board of managers to be executed by the commissioners?

(Objected to, because the plan itself ought to show that; it is in writing.)

A. The leading feature was, sir, to get a complete and sufficient outlet for all the water on the Great Meadows.

Q. In what way was such outlet to be secured?

A. By enlarging and deepening the channel of the Pequest from some distance below the Great Meadows up to and through those meadows, making it large enough so as to hold all the water of the stream within its channel.

Q. What can you say as to its success, present or prospective, in relieving the meadows of this water?

A. It is a complete success, as far as could be looked for in the time in which it has been in operation.

Q. Was it at all to be expected, Doctor, that all this immense body of land should realize the full benefit of the drainage within so limited a time as the present?

A. No, sir; I did not, and indeed so stated at the outset that it would require years to realize the full benefits of this drainage.

Q. Do you suppose, or had any one a right to suppose, that all these lands lying at a distance from the Pequest were to receive the direct benefit of this drainage without connecting their own lands by cross-ditches?

Objected to, on the ground that he cannot speak as to that as an expert, and because it is not within the plan of drainage. If it is, it will speak for itself; and because the question is irrelevant.

A. I did not suppose they would get the full benefit of it without cross-ditches opening into the Pequest.

Q. How, Doctor, does the work done by the commis-
251. sioners affect the lands lying above the old high-water mark of the Pequest so as to benefit them?

A. It affects all the lands which are somewhat flat and lying above the old high-water mark by allowing the water in the soil to sink lower beneath the surface; for an example, the water in the upland near the meadows does not stand on a level, but its upper surface is higher and higher as you get further away from the old high-water mark from the water level; being held back by the ground and lowering the water level will, of course, lower the surface of the water in the ground to the same extent that the level of the water is lowered in the stream; so that I should expect that the water in the ground, which is two feet above the high-water level and forty rods away from it, would stand at least one foot higher than the water level on the meadows or flowed ground, and that all the intermediate part would be on a slope between the two; this slope of the water in the soil pretty nearly corresponds with some observations I have had occasion to make, so that I am satisfied that notice should always be taken of this rise of water outside of the ordinary level of the water.

Q. When and where were your recent observations in that respect made?

A. The last ones that I have had occasion to notice were in Newark; the driven wells from which they are drawing water for the supply of Newark are on the flat ground near Belleville, and the surface of the water in the flat ground stood from one to two feet above mean tide, and now after pumping for two months or more, so that they are getting the water out faster than the rain comes, the slope of the water surface is the other way; the surface itself in the wells being from one to four feet lower than mean tide, due, as I judge, to the fact that water in the river does not get through fast enough to stand on the same level in the ground that it does in the adjoining river.

The nearest of the wells is not more than three hundred feet from

the river; they extend out in a line farther; the character of the soil would effect this rule.

252 Q. Would the soil of the Great Meadows tend to increase or diminish the level?

A. I think the soil of the border of the Great Meadows is heavier and closer than the soil in Newark, and, of course, it would hold back the waters here; it would stand at a higher level than in the soil at Newark.

Q. What velocity of current in such a stream as the Pequest, having a channel thirty feet wide, would be sufficient for securing proper drainage of the adjacent lands?

A. I can't answer the question, sir; it was computed to begin with and we have tested the stream since, and find that the velocity is greater than we expected; I did not bring the notes of the observations with me.

Q. What is the natural effect on the bed of such a stream of increasing the current materially?

A. That will depend on the material of which the bed is composed. In the bed of the Pequest, just at the outlet from the Great Meadows, and also for a long distance in the stream near Vienna, the bed of the stream is composed of boulder, clay, and stone; the current doesn't seem to effect that at all, and the mud or fine material all through the Meadows, and also on the flat ground immediately below Larrison's bridge, is composed of clay and sediment from water; this material cuts away rapidly with any increase of current, so that the moment the channel was lowered at the outlet five feet or thereabouts, the water, with its increased velocity, began to cut away the clayey sediment in the meadows, and it continued to cut it away whenever there was opportunity until the bottom of the stream took about the same slope it had before the outlet was cut but about five feet lower; in other words, the bottom of the stream through the Great Meadows is just as steep as it can be with the present velocity of the current.

Q. Is it or not to be expected that in a stream so crooked as the Pequest slight sand bars will form on the inner curves of the river?

253 A. Temporary bars will form in the curves, but they vary with the height of the freshet and the rapidity of the current; and I should not consider them as permanent bars; they vary at different times; they are shifting.

Q. What would have been the difference in the relative cost between the present system of drainage and that which contemplated a cut through by the Danville church?

A. The cut by the Danville church would have cost a good deal more than the present deepening of the channel did; I have not the figures in memory; I can say they are on record if they are wished; I refer to the geological report of 1870, page 72.

Q. In your judgment, did the proper discharge of the duties of these commissioners, or not, require the continual supervision of one or more of them, to see that the work was properly done by the contractors?

(Objected to by Mr. Shipman.)

A. I hardly know what to say to that, sir; I considered that they would attend to it in a way that they thought was proper; I had entire confidence in them; whether it was necessary for them to go every day or not I can't say; the care and responsibility of the work was on them and that was continuous.

And being cross-examined, said:

Q. Did you reduce to writing the plan of drainage of the Great Meadows?

A. I did.

Q. And was it adopted and recorded in the book of minutes of the board of mangers, or what was done with it?

A. It was adopted and transmitted to the supreme court for their action and left in their possession

Q. Do you know how long ago that was, doctor?

A. No, sir; I have forgotten now; it was six or seven years; possibly more; it can easily be ascertained, however.

254 Q. What do you call the outlet of the Pequest?

A. I meant mainly the stream from the outlet of the Great Meadows down far enough, two or three miles probably, to allow sufficient fall for the stream when deepeded, and also the Pequest as it passes through the Great Meadows.

Q. Well, what do you understand to be the outlet of the Great Meadows?

A. Well, I meant Pequest river.

Q. What do you consider the commencement of the Great Meadows on the south?

A. I consider it near Larrison's bridge, within a hundred feet above or more; that's the lower end of the Great Meadows.

Q. And what do you consider the northern terminus—the upper end?

A. It is just beyond the line between Sussex and Warren, near Tranquility.

Q. When was you over this work to inspect it?

A. It's a year ago now; I think I was there two or three times last year, and once within a year from this date—in 1879. I don't think I could tell what time in 1879.

Q. And when were the other two or three times; specify as nearly as you can?

A. I think the last time before that was after the work was done. I went up above long bridge to observe the effect of the water upon the bed of the stream. I think in February, 1879. Mr. Force was with me. There had been ice. Then I was along the stream from there all the way down. I was there the preceding autum—I think in November, and once or twice in the summer before that, in seventy-eight.

Q. About how long ago was the last time you were there?

A. I think in July or August of 1879.

Q. Did the board of managers, or you acting for them, have the whole of the Great Meadows surveyed and filed with the supreme court?

255 A. Of the country to be drained we did, but it was done with the understanding that the assessment was to be laid on lands which the commissioners judge should bear the expense, and I did not suppose that we had the exact area which they might think proper to assess.

(All of the above answer except the first statement objected to by Mr. Shipman, as not responsive.)

Q. You don't mean to say that in your opinion that the commissioners had a right to go outside of the area fixed by the board of managers and pick up land here and there wherever they had a mind to and assess it for benefits, do you?

A. I supposed that they were the judges of the lands that were benefited by the drainage.

Q. Benefited how—inside or outside of the survey made by the board of managers?

(Objected to by Mr. Little.)

A. On either side; I supposed they might either diminish or increase it slightly as in their judgment was right.

Q. Did you ever see the notice the board of managers gave?

A. Yes, sir.

Q. Would you know it if you saw it (being shown Exhibit E, on part of E. Simanton)?

A. I have no doubt that is a copy of the notice.

Q. Do you know, Doctor, how far they put the dredge in?

A. I don't know the exact distance; some little distance above long bridge—maybe a quarter of a mile—where they stopped.

Q. Well, do you think it is completed before they have run the dredge all the way up as far as the survey extends so as to reduce the bed of the stream and keep the water from flowing over the lands adjacent to it above the point where they stopped?

256 A. I do; I did not suppose it any part of the plan to put a dredge all the way up. The current is now cutting the bed of the stream above where the dredging ceased.

Q. When have you been to look at that, Doctor?

A. Some time after the dredging ended. It was with that very object, sir.

Q. Do you know what the character of the bottom is above there, Doctor?

A. I judged it to be the same as below from the appearance of the surface. That's all I know about it.

Q. Well, if you were told that the bottom of the stream above where they left off with the dredge was different from below you'd believe it, wouldn't you?

A. That would depend entirely on the person who had made the examination. From the surface I judge there are no bars of bowlder clay and stones across the stream.

Q. Well, now, we have Jesse Adams, Mr. George H. Ayers, and others whose lands lie on the Pequest above where the dredge stopped, and who say that their lands are overflowed as much as

ever, and that nothing can benefit them except reducing the bottom of the stream; what do you think about their testimony?

(Objected to by Mr. Little.)

A. I think that unless the bottom of the stream is already reduced that they are quite right, but I think the current can be made to reduce the bottom of itself, by its own force.

Q. You say the work has been completed, Doctor; when was it completed, according to your judgment?

A. I considered it completed when the heavy expense for opening the main stream was ended.

Q. You say it has been inspected and approved by the board of managers; please to state when it was, and who inspected it.

A. The board appointed Mr. Force and Mr. Selden Scranton, two of its members, to attend to this very business, and they made
257 their examination and report to the commissioners of drainage. I can't tell the time; it was last summer.

Q. You made a report in 1870, as I understand you?

A. Yes, sir.

Q. Now, in that report didn't you state the chief expense would be the cutting through the rocks at the reefs, and that that might cost $20,000?

A. The report is there; what does it say (being shown it)? The statement appears in the appendix to my report, and was made by Prof. Bowser. I refer to it on page 17 of my report. I approved of the report in general.

Q. You sent a copy of that with your compliments to Dr. Wurts, didn't you, or sanctioned the sending?

A. I think likely the words "with compliments of George H. Cook" were written at my office, but I am not sure that they are in my handwriting; the words "Dr. C. S. Wurts" are not in my writing.

Q. Doctor, did you think to take out a hundred and eighty-two thousand cubic yards of excavation on the Great Meadows ought to take the supervision of a person 875 days, or about that?

A. I couldn't form a judgment on that without knowing a great deal more about it at this time; I can imagine that it might take that.

Q. Why, Doctor, how long do you suppose it will take for the effect of this drainage to become manifest upon people's lands along the Pequest?

A. That will depend on how they make use of it by means of drains and giving opportunities for the water to seek the Pequest. If no drains are cut, it may take eight or ten years for the lands farthest off. The benefits will be hastened or retarded according to the management of the owners of the land.

Q. Well, Doctor, how do you suppose a man is to be benefited whose lands lie a mile or three-quarters from the Pequest, and between whose lands on the Pequest lie other persons' lands?

(Objected to by Mr. Little.)

258 A. Mainly by ditches or drains from his land to some outlet to the Pequest; the plan for this must vary with each particular case.

Q. Suppose he can't find any outlet and the intervening land owners won't let him ditch through them to the Pequest; what are you going to do then?

A. If there is no law authorizing it, I don't know what is to be done.

Q. Do you mean to say that land can be benefited by this drainage that lies above the high water mark of the Pequest, supposing that the whole tract lies on the Pequest?

A. I do; the best agricultural drainage I have ever seen, the best farming land, required that the surface of the water should be kept eighteen inches below the surface for a meadow, and fully three feet below the surface for the best growing of wheat.

Q. How far outside of the overflow are the flat lands affected, as you call them, and what affects them?

A. That must depend on how near those lands are to being level; I think they are affected to some extent until the surface is at least three feet above the overflow line.

Q. Suppose a man should come and tell you that he had by actual experiment found that the land along the Pequest in a certain place within the exterior line of this survey, but outside of the overflow from the Pequest, was not affected by the lowering of the channel, would you believe him?

A. I think likely, but I should ask him some questions; I shouldn't accept it without some inquiry.

Q. These lands you speak about at Newark, were they all on a level?

A. Pretty near; they're upland, not a meadow, not wet ground at all; there are variations of three or four feet in the surface.

Q. Take a strip of land where from the flat land there commences an ascent until it reaches a grade of two feet to two and a half above that low ground, will not all the water which runs on this
259 high ground from a point above at the upper side of it or which falls on it from the heavens, except that which soaks into the ground, find its way into the level ground?

A. Yes.

Re-examined:

I was present with the commissioners on Larrison's bridge before this drainage was commenced. The whole of the ground there was overflowed, so that you couldn't see the channel.

Q. Can it be possible that the lands lying on the upper part of this stream can be overflowed to the same extent and for as long a time since the outlet has been reduced some four or five feet?

(Objected to.)

A. I should think that it possibly could be for so long a time as before.

Q. Do you know where the original application for this drainage signed by the land owners is?

A. No, sir; it was left with the supreme court.

Being shown paper marked Exhibit 1, on the part of the commissioners, is asked:

Q. Is that a copy of it?

A. It is; it is in my handwriting.

GEORGE H. COOK.

Sworn and subscribed before me, this 9th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

WILLIAM M. FORCE, a witness produced on the part of the commissioners, being duly sworn, said:

260 I reside in Newark; I am one of the board of managers of the State geological survey, and have been since 1864.

The board adopted a plan for draining the Great Meadows of Warren county.

I have, since the commissioners were appointed, been along the stream twice, in July, 1878, and in February, 1879.

I was one of a committee appointed by the board to look after this work. The other members of the committee were Mr. Scranton and Prof. Cook. The committee met in July, 1878, and in February, 1879.

Q. Had the work been completed in February, 1879?

(Objected to, because he's not an expert.)

A. It had.

Q. What decision did the committee make as to the manner in which the work was done, if any?

(Objected to by Mr. Shipman.)

A. We decided it satisfactory, and so reported to the board of managers.

Q. Did you so inform the commissioners at that time?

(Objected to.)

A. We did.

Q. Did you have any opportunity to examine the effect of the work upon the lands, and did you form any opinion thereon?

(Objected to.)

A. We did form an opinion, and it was very favorable as to its effects.

And being cross-examined, said:

Q. Did you report in writing?

261 A. Prof. Cook was authorized to embody the report in his report.

Q. The committee authorized Prof. Cook to embody the report in his report, did it?

A. Yes.

Q. Well, did you committee get together and agree upon a report and instruct Prof. Cook to report, and what to report?

A. The committee agreed upon a report upon conference, and that it should be made a part of the Professor's report which will appear this year.

Q. Did Dr. Cook ever make his report?

A. Doctor made his report.

Q. Well, was that entered on the minutes of your board of managers?

A. I am unable to answer that; I am the secretary of the board, and have been always; we keep minutes of our proceedings. The minutes are more of a general character than special; I didn't bring it, because no one asked me for it. The plan of drainage was in the report made to the supreme court; I can't say whether it was embodied in our minutes or not; I doubt it. We have not kept a record of everything we have done since we were a board.

Q. Well, do you know what has become of that report?

A. I filed it in the supreme court myself; I have seen it there since.

Q. When?

A. A long time ago; I don't know where it is now.

Q. How long were you up at the Great Meadows in 1878?

A. We'll say about five hours; Prof. Cook was with me and Mr. Day.

We commenced at the lower part by the bridge and went a long distance, up to where the dredge was then at work.

We were there in 1879, long enough to walk six miles and spend a good deal of time in the examination in the interval, say five or six hours. Those are the only occasions when I have been there.

262 Q. I suppose, sir, that the board of managers came to the conclusion that the Great Meadows were drainable from Prof. Cook's geological report of 1870, did they not?

A. I can't answer, that, sir.

Re-examined:

Q. Wasn't it later than February, 1879, that you were there?

A. It might possibly have been March. There was a good deal of ice, and it was very cold.

Recross-examined:

The creek was not very high. There had been a considerable freshet. The report of the plan of drainage made to the supreme court contained a regular survey of the boundaries and a large map of the tract. Seldon T. Scranton was not along on either of the occasions I speak of.

Q. Did Prof. Cook and you then agree upon a report?

A. Yes.

Q. I suppose Prof. Cook and you were guided largely by what the commissioners said, were you not?

A. No.

WM. F. FORCE.

Sworn and subscribed before me, this 9th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

ABRAHAM R. DAY, a witness produced on the part of the commissioners, being duly sworn, said:

I live in Independence township, Warren county, New Jersey; I have lived there all my life; I am sixty-two years old and a fraction; my business is surveying and civil engineering; I have
263 been almost constantly engaged in it; I acted as engineer for the commissioners in this work of drainage; I was employed in July, 1873.

There was little difference in the supervision for the first six months. Judge Boyd's health then failed him; Dr. Clark was there a very few times and then resigned, and since the first six months the work of supervision fell almost entirely upon Mr. Hoagland till Mr. Johnson was appointed in 1875; after that Mr. Hoagland still did the main body of the work.

Q. Did the commissioners advertise for proposals for the doing of the work?

A. They did.

Q. Who drew the advertisement?

A. I drew them at a meeting of the commissioners.

Q. Was it published in more than one paper?

A. It was published in The Hackettstown Gazette, The Belvidere Apollo, and the Register, if I recollect aright.

(The witness produces newspaper, The Hackettstown Gazette, dated June 27th, 1874, which was marked Exhibit 2 on part of commissioners.)

Q. Did you receive the proposals and draw the contracts?

A. I did.

Q. Do you recollect how many of the different contracts there were?

A. I think six or seven.

Q. Was the work to be paid for in bonds or in money?

(Objected to, because they ought to produce the contract.)

A. In money.

Q. What was the principal feature of this whole drainage system?

(Objected to, because witness is not an expert.)

A. The principal feature was to deepen the channel of
264 the Pequest; straighten it to some extent; clear out the ob-

structions, and remove from its banks such objects as were likely to fall in, and to clear out the main tributary streams running into the Pequest in the Great Meadows in order to furnish outlets into which the owners could discharge their field drains when they came to drain their land.

Q. Was, or not, one of the principal features the removal of the two reefs, one at Bulgin's bridge and one below it?

A. It was.

Q. How much was the bed of the stream lowered there?

A. In the upper one at the steam mill bridge, five feet and a half, and at the lower one near the old turning mill, four feet only.

Q. What effect had that upon the current?

A. It immediately regulated it so as to make it uniform; before the stream was full of pools, slack water and rapids, alternating.

Q. What affect had it upon the velocity of the current?

A. It brought the current which before was unsteady and irregularly to about 130 to 140 feet per minute.

Q. Have you examined the stream recently?

A. I have; on the last occasion Mr. Howell and Mr. William Vreeland were with me; this was last Tuesday a week; it was the 20th of January; our examination extended from the mouth of Bacon run, just above Vienna to the mouth of Trout brook, just above long bridge. We found the current very regular indeed; we found no obstructions that appeared to affect the current; we found the stream with no bars of any consequence, sufficient to make a pool or a slack water above or a rapid below; we found the stream of the standard width in every place except two, where small stumps had fallen in. These small bars I speak of were in the inside of every bend in the stream; I think they are not likely to increase in size; they are subject to continual alteration. I did
265 the writing and figuring in the making of the assessment so far as the commissioners called upon me.

Q. Was it proper, or not, in your judgment, to assess lands lying above high-water mark?

(Objected to.)

A. It was.

Q. Why?

(Objected to.)

A. When we ran the exterior line there was the wet land before our eyes. Another reason is that water will gather and collect on land ten or twelve feet per mile elevation, above the stream into which they discharge. I mean ten or twelve feet elevation in a mile, of course.

Q. Was it right, in your opinion, to assess for benefit the lands lying on the stream above where the dredging began; if so, why?

(Objected to.)

A. It was, and for the reason that those lands were furnished with an outlet, and the owners enabled to lower the stream themselves

when they saw fit, which they could not have done before. Another reason, it gave the Pequest and Trout brook to wash out and clean themselves some distance up the stream, and another reason, the floods which came down from above where the dredge stopped will run off several days earlier than formerly. All of which has a tendency to dry and benefit the land.

Q. Have you made any examination as to the effect of the current above the dredging upon the bed of the stream above Trout brook.

A. I examined them early in the summer and found Trout brook and Pequest river washed out to a depth from two to three feet a portion of the way, and lessening gradually as you go up stream.

266 Q. Were you familiar with these meadows before the drainage?

A. Yes, sir; I had been passing around them and on them all my life, pretty much. The condition of Mrs. Wurts' land that has been assessed, according to my earliest recollection, was that it had an appearance of one vast bog. Immediately before the drainage we ran the exterior line as closely as we could to the line between the wet and dry, and then we went inward from the exterior line toward the creek, for purposes of examination. Her land was wet and soft, and most of it, I should say, unsafe for cattle to run in. There are two small tracks, one on the east side and one on the Pequest, which had been improved by Dr. Paul and were not in this condition. There were some very old ditches leading to the Pequest. There was only one in her land that I remember. The others passed off into lands of other owners. The ditches were nearly filled up.

Q. Was it possible to drain that land in the condition in which the river was prior to the dredging?

A. I think not.

Q. Is it possible to drain it now?

A. It is.

Q. What was the condition of Isaac Cummins' land before the drainage?

A. A portion of the 105 acres with which he is assessed he attempted to improve by a considerable amount of ditching, and the balance of it was bog, very much resembling Mr. Wurts'.

Q. Into what did his ditches discharge?

A. Most of Mr. Cummins' ditches appeared to discharge into a large meadow ditch, as they called it, which ran down into the swamp east of Post's Island. That ditch ran into this swamp. When I was there it was full of water, and I could examine no further, and I never followed it to its outlet, if it had any. My levels show an elevation or water shed running from the main land through the Green property to Post's Island, and a sort of basin is formed just above this ridge of land, which receives the waters

267 from Mr. Isaac and Polhemus Cummins' land, when it is high enough to overflow, this ridge gets out under the bridge on the Post's Island road.

(Adjourned to February 10th, at 9 a. m., at same place.)

Parties met pursuant to adjournment February 10th, 1880, at 10 a. m.

Q. What provision, if any, did the commissioners make for the drainage of these lands of Polhemus and Isaac Cummings?

A. They have opened the ditch from Post's Island road down to the Pequest, to what we call the Base Lime Station 309, and they have opened the main ditch or outlet of Schmuck's saw-mill brook from the lands of these men to what is called Base Lime Station 431. They are on the Pequest, and the water from the lands of Isaac and Polhemus Cummins can be drained off through either one of these. Besides they have lowered the bed of the Pequest about three feet at the discharge of the old ditch, said to have been opened by Dr. Paul and afterwards stopped up again by him. In these three ways the water can be drawn off of the land spoken of. The lands of Polhemus and Isaac Cummings before the drainage commenced, except a small portion immediately along the shore line, were in a boggy, wet, or sour condition. We lowered the bed of the stream through Mrs. Wurts' land an average of about three feet and a quarter.

Q. Do you know anything of a needle-mill spoken of by Dr. Paul in his testimony, page 194.

A. I do not. I never heard of any such mill, nor any mill, except Schmuck's saw-mill. A ditch commencing at the saw-mill and running an easterly course would not carry the water to the Pequest. There could be no effective draining of these lands of Mrs. Wurts east of the Pequest, without conveying of the water to the river.

On the westerly side of the Pequest there is a considerable
268 portion of Mrs. Wurts' land, some thirty acres, which was improved by Dr. Paul, some twenty-five or thirty years since, I should think, and the balance of it is boggy, wet, and sour. The Crane Iron Company's land, before the work of the commissioners commenced, I was over once.

Q. What was then the condition of the lands?

A. I was a stranger to that land. I was never on it till after the exterior line was run, when I went over it to examine it, and went over the land and found a small portion had been cleared and subdued some years ago; but the main body of it was covered with large bogs and portions with water, so deep that we did not wish to wade through it, and went no further. We saw old ditches filled up, having water in them almost even with the surface of the ground, and moving very slowly towards the Pequest, more standing than running. On the land which I said had been cultivated was a growth of sour grass, and there was some bogs, but only a few. Opposite the Crane Iron Company's land the river was lowered about four feet. The effect of the drainage upon the land lying below Larrison's bridge was that it made the land so dry that some of the owners immediately underdrained, cultivated, and have had large crops on it since. Mr. Simanton's land on that portion which was wet and sour, it enabled him to plough and cultivate in ordinary farm crops, and it is all made much more valuable for hay.

Q. From your observation of the effect of the drainage upon the Great Meadows, by reason of the work done by the commissioners, has it been a success or otherwise?

A. It has been a most decided success.

I never was in the Goose Pond to my knowledge.

I was present when Mr. Force and Dr. Cook examined the work. There was a meeting once held in Oxford, called by the managers of the geological survey, at the solicitation of the commissioners of drainage. It was held on the 26th of April, A. D. 1879. There were present of the managers, Mr. Force and Dr. Cook, State
269 geologist, Judge Boyd, Mr. Hoagland, Mr. Johnson, and myself. Mr. Scranton was not there; he was called to New York. I was secretary of the commissioners. I only acted as treasurer in assisting Judge Boyd, and I had the care of a portion of the papers. Judge Boyd has a part of them at his own house.

Q. You spoke of there having been several contracts. Can you tell the amount of the work done by each of the contractors?

(Objected to, because the contracts and the estimates ought to be produced.)

A. Page and Company were the first dredging contractors and done $4,339.61 worth of work. E. and G. Bulgin were also contractors and did $3,266.80 worth of work. Next came John S. Little who did $2,711.28 worth of work; and then came Stevens and Fagin, who done $56,926.45; and besides these there were a number of smaller contractors, from thirty dollars up to five hundred. I can't give the amounts.

The commissioners kept regular minutes of their meetings, and of their action in each case.

Judge Boyd was the acting treasurer; I have the contracts here. Mr. Little said the contracts are presented for the use of the exceptants if they wish them to offer them in evidence or use them.

And being cross-examined, said:

Page & Company did their work in the fall of 1874, altogether. Bulgins did theirs mainly in the fall of 1874, and, I think, a little in the spring of 1875.

Fagin & Co. did their work from about the first of December, 1875, to the 20th of December, 1878. The work was complete in December, 1878, except a little of Schmuck's saw-mill brook, which we completed in the following April. Charles Pierce did that.

Q. When did you consider the work of drainage completed?
270 A. At the completion of Schmuck's mill ditch in April, 1879.

Q. Where did you get the figures you have given us here of the amount of work done by each contractor?

A. I was required by the commissioners to measure every month and make out an estimate of the work done and certify it as engineer, and I took it from those estimates. I have copies of those estimates which I kept. The treasurer has the originals. I have a note book here; I put these figures in it this morning from another

statement I made at home; I did not get that from Judge Boyd, this morning; I copied it from a memorandum I made last week for Mr. Little; these statements I got from my private papers, but they are copies of the official papers. This Stevens & Fagin contract was made in November, 1875.

Q. You say the work was to be payable in money. Was it understood where the money was to come from?

A. Yes, sir.

Q. Where?

A. Raised from the sale of the bonds which the commissioners were authorized to issue.

Q. Was it not understood that Stevens & Fagin were to take bonds for their work?

A. No, sir; not unless they chose?

Q. They did take bonds, did they not, for nearly all their work?

A. No, sir; they did not.

Q. Do you know whether they had any bonds or not, Stevens & Fagin?

A. Yes, sir; I have seen them have bonds.

I do not know how many they had; I suppose they must have gotten them from the subscribers.

I do not know where the bonds were negotiated.

Q. Don't you know that the great bulk of these bonds were put in the hands of a broker in New York, and that Stevens & Fagin got their bonds for their work of that broker?

A. No, sir; I do not.

271 Q. You do not know, then, of your own knowledge, where the bonds were negotiated and sold?

A. No, sir; some of them; in this part of the country I do.

Q. How many do you know of being sold in this community?

A. I couldn't give you any exact amount; kept no account of it.

Q. Can you give any general idea of how many?

A. I should think, about one-half of the whole.

Q. Can't you tell anybody that got them?

A. Well, Mr. Scranton took a considerable amount; Mr. Maring, up at Wiretown, a small amount; Mr. Simanton took a small amount; I took a moderate amount myself at different times, probably somewhere about fifteen or sixteen thousand dollars of them from the beginning; I paid cash for them invariably; I disposed of them mainly; I have about three thousand dollars of them yet.

Q. What did you do with the bonds?

A. I disposed of them to other parties.

Q. Did you give the bonds over to the contractors?

A. No, sir; I gave the bonds in some cases to the contractors, who took them to the city and brought me back the money on them.

Q. Did you draw this last report of the commissioners filed in May, 1879?

A. Yes, sir.

Q. I observe in that you use this singular language: "We have bonds issued to the amount of twenty-five thousand dollars." How came you to use that expression if they were sold for cash?

A. Well, I consider one expression as synonymous with the other.

Q. Mr. Day, you have never been engaged in anything like this drainage before, have you?

A. Yes, sir; on my own land and in locating ditches for others. In these large drainage operations I first had my attention drawn to it so as to study it as a branch of my profession on the
272 Passaic Meadows, below Chatham and Parsippany, towards Little Falls, while I was making surveys through that region for the Morris & Essex Railroad Company. The people there were making continual inquiries as to levels and other engineering points relative to the drainage of those meadows, and so I was led to study up the whole subject as a professional matter. I have also made two plans of drainage for tracts in Florida, and superintended the execution of one of them. I did one of them seven years ago, and one four years ago.

Q. You spoke, Mr. Day, about the creek being reduced two or three feet in depth above where the dredge was put in. Will you state whereabouts you made that discovery; how far up?

A. The excavation where we stopped was about three feet below the bed of the creek, and, of course, at that point there would be a water fall to that extent, and which would commence washing out and working back up stream till its power was measurably exhausted. This point, as near as I could judge, was nearly one-fourth of a mile up from the mouth of the Trout brook on that stream, and from the same point on the Pequest. The Pequest is a very crooked stream. There were some very sharp angles in it, a little less than a right angle, but now we have taken off the sharpest of those angles. I should say it was still a very crooked stream, but not so crooked as seriously to enterfere with the current. I have often tested above and below these curves as to the velocity of the water, and found the current nearly the same above and below.

Q. This day you were there with Mr. Howell, what was the depth of the water?

A. I should think about three feet.

Q. Was the water clear or muddy?

A. Neither exactly.

Q. Could you see the bottom of the stream all the time?

A. Yes, sir; when it was closely observed.

Q. How many miles did you traverse that day?

A. A little over seven and a half.

273 Q. When did you start and when go off?

A. We started early in the morning, and left Larrison's bridge about dark—could just fairly see. Did not stop to dine.

Q. How many sand bars did you see?

A. I did not count—one at every bend. There is in every stream of water.

Q. Didn't you discover any sand bars between Larrison's bridge and Bacon's run?

A. Only in a bend of the stream.

Q. How many times did you measure on the way?

A. Do you mean as to width?

Mr. SHIPMAN: Yes.

The WITNESS: Oh, a great number of times; a score or two, probably.

Q. Whereabouts did you measure?

A. We measured in every place where either Mr. Howell, or Vreeland, or myself had any doubt about the width.

Q. Measured the bottom or the top?

A. The surface of the water.

Q. Well, how did you find the width to be at the surface of the water?

A. It was not narrowed by bars, stumps, or otherwise, except in the case of two stumps which had fallen in, where it was one foot inside of the standard width.

Q. I want to know the exact width that you found.

A. Twenty-nine feet between the stumps and the opposite shore, and three feet between the stump and the other shore.

Q. Where were those two stumps?

A. One southwest of Post's Island, and the other a little below the line at the place where Post's property joins the Scranton.

Q. The width of the channel increases as it approaches nearer the top, does it not, Mr. Day?

A. Yes, sir.

Q. Is the channel wider at the top now than it was when they put the dredge out?

A. Yes, sir.

274 Q. How are the sides, more perpendicular than they were?

A. No, sir; they are more sloping.

Q. Are not the sides pretty straight up and down?

A. No, sir; there are some few places where it is hard pan.

Q. Has not there been a great deal of caving in, since the dredge was taken out, on the side of the bank?

A. No very great deal. Not as much as we expected.

Q. Did you direct the commissioners what land to assess in this assessment?

A. No, sir; not at all.

Q. Was you with them when they made the assessment?

A. I was.

Q. Did you run out the particular lands that were embraced in the assessment, for example, the Mrs. Wurts' land?

A. I did, or had it done under my direction.

Q. That was your own act, was it?

A. The survey part; yes, sir.

Q. Well, in the report of the commissioners they give a general survey, and then they give the metes and bounds of each lot separately which they said should be assessed for benefits; was that your judgment and yours only?

A. It was, except the location of the exterior line; that the commissioners did.

Q. Was you with the commissioners when they made out the amount which each property should pay?

A. I was.

Q. Did you fix the prices to be put upon them?

A. No, sir; the commissioners did that.

Q. I see in Mary V. Wurts' property, while they have not changed the numbers of the lots, they have put it in two assessments, to wit: 276 acres at $5,568, and 398 88-100 acres at $7,779.84. Do you know why they made the assessment in that way?

A. I did know at that time, but I couldn't recall now.

275 Q. They assess Isaac Cummins for 105 acres; had not he been cultivating these 105 acres for many years?

A. Only a portion of them.

Q. How much?

A. Possibly a third; that would be my impression now.

Q. Have you paid much attention to these 105 acres?

A. Yes, sir; ever since the location of the exterior line in 1874.

Q. Had you ever known it before?

A. Yes, sir.

Q. Mr. Cummins says he farmed the whole 105 acres. What do you think about that?

A. I didn't think that was possible; it must have been a long time ago, if ever.

Q. Mr. Cummins had his ditches all open, didn't he?

A. They were not open—very much filled—are now; that is, with one or two small exceptions.

Q. His land—this 105 acres—all lies above the high water line of the Pequest, does it not?

A. Yes, sir.

Q. The ditches he had there would have carried all the water off if he had kept them open, wouldn't they, down into this Post's swamp?

A. No, sir; they would not, except in a dry season.

Q. Well, the commissioners didn't open any ditches around Mr. Cummins' land, did they?

A. Yes; they opened the channel of Schmuck's saw-mill brook on one side of his land, the north side.

Q. Have you observed, Mr. Day, whether this drainage has been of any practical benefit to Mr. Cummins? He says it has not. Do you differ with him?

A. I do.

Q. Which should know the best, you or he?

A. I would rather some one else should judge as to that.

Q. Have you been on his land since the drainage was completed?

A. Yes; several times.

Q. When?

276 A. I was on it two or three times in the months of May and June last, and in the month of January in this current year.

Q. What was growing on it last June when you was there?

A. There was some of that near the shore that appeared to have

been ploughed; I didn't go near it to ascertain; and the balance was covered with grasses such as usually grow on a watery soil.

I didn't see Mr. Cummins when I was on there; I went there to examine the manner in which the work on Schmuck's brook had been done, and again to get some measurements I found myself short of, in order to make out Mr. Pierce's estimate. I did, on the one occasion, go to look whether Mr. Cummins' land had been benefitted; that was in June, 1879; Judge Boyd, Mr. Hoagland, and Mr. Johnson were with me; we were there I couldn't say how long. We were passing from one to another as fast as we could make the necessary observations; it would be hard to say; this was preparatory to making the assessments.

We were about two weeks going over all the ground preparatory to making the assessments from Kennedytown clear down.

I think it was all done between about the 10th of June and the 4th of July—not continuous.

In making the examination we were actually employed, as near as I can tell, about fifteen days

We had the commissioners' territorial report with us. Before making out the assessment we were on every tract; wherever there was any occasion to observe closely we stopped and made an examination; we were on the Mrs. Wurts' track on both sides, perhaps, a half a day.

This assessment was partly made out at the house of Mr. Johnson and part at Mr. Boyd's house; I was present and the commissioners, all of them, except on one occasion when Judge Boyd was absent, when they adjourned and went to his house; I made out the calculations for the commissioners; I was present at their discus-
277 sion concerning the mode of assessment; answered all questions they put to me. I did express an opinion as to how much the assessment ought to be for some lands where I had a decided opinion of my own.

They followed my opinion in some, but not always; we differed sometimes.

I couldn't recall any given case in any one of the 128 tracts when I expressed an opinion. I cannot recall as to Mrs. Wurts.

Q. But your opinion entered into the matter and controlled the commissioners, more or less, in all cases, did it not?

A. No, sir; not that I am aware of.

Q. You were present at all their meetings and expressed your opinion on the assessment that ought to be made, did you not; and in many instances the commissioners followed your judgment in making the assessment, did they not?

A. I could not say as to that. They agreed with me. That's the most I know.

Q. Can you tell upon what theory they assessed this amount on the land of Mrs. Wurts?

A. No other than the general theory that the lands by this drainage would be made capable of a productive capacity equal to a certain valuation, and the difference between this and the valuation before the drainage was considered the benefits. From these were

deducted certain general expenses of reclamation, and the balance represented the assessment. That I understood to be the theory of their assessment.

Q. Well, you thought over $13,000 a pretty high assessment for benefits on that land, did you not?

A. No, sir.

Q. Well, would you like to pay that and take the land?

A. Yes, if you confirm the assessment, I'll pay it and take the land.

Q. Is not the large amount of this Mrs. Wurts' tract capable of being drained without the dredging of the Pequest?

278 A. No, sir; only a very small part of it; especially since the effort made by Dr. Paul.

Q. Have you read Dr. Paul's evidence?

A. Yes, sir.

Q. Did you believe it?

A. Well, I differ with him as to the cause of his disappointment there.

Q. A large amount of this land lies above high water mark in the Pequest, isn't it?

A. Yes, sir; but it is not above this disposition of the water to dam up in the soil.

Q. How much fall must there be before that damming up of the soil will cease?

A. Ten or twelve feet in a mile. Some authorities say thirteen feet.

Q. How much would that make down by the high water line?

A. I don't know the distance from the shore to the high water line. I never established it.

Q. Suppose that at the high water line there was a fall of from two and a half to three feet from the shore line, wouldn't that be sufficient to carry off all the water on the Mrs. Wurts' tract?

A. With my knowledge of the ground I would say that would not be half enough. This territorial report we had in June is the one we made when we first went around the whole tract; the same exterior line, and the boundaries of the lots are the same.

Q. When you went around and surveyed the exterior line, had you the boundaries made by the board of managers?

A. We had.

Q. Where did you get it?

A. From the clerk's office of the supreme court at Trenton. It was in the commissioners appointment. It was the same description as is contained in Exhibit E, on the part of E. Simanton.

Q. Mr. Day, Mr. William Vreeland says that the Crane Iron

279 Company's land is not benefited, and cannot be till it is connected with the Hoagland ditch. Is he correct about that or not?

A. Well, he is correct, so far as the connection with some outlet; my own opinion is that I would connect with the Pequest.

Q. You'd have to run over other people's land a great deal, would you not?

A. No very great deal; but very little. There is a boundary line from their land between two other owners almost to the river. You would have to go over lands of other people.

Q. Mrs. Wurts' men that have lived on the farm say they cannot see any improvement in the land from the effect of this drainage. Do you think they are correct about it?

A. No, sir; I do not.

Q. You say this drainage has been a great success. In what respect, Mr. Day?

A. In controlling the water in the Pequest river.

Q. Do you seriously think that Isaac Cummins has been benefited to the amount of eighteen hundred dollars on his land, or that he ever will be?

A. Yes, sir.

Q. About how long were Stephens & Fagin engaged with the dredge in the stream; how many days?

A. They were here about three years. I couldn't tell you how many days they were digging.

Q. Have you no means of telling how many days they were actually engaged in work?

A. Not at this time. No, sir.

Q. How many days did it take you to go over the ground making out that territorial report?

A. I could not tell. I have no account of it. I did not distinguish that from other survey work. I did not go along much with the men who were working the dredging. I would be around where they were at work from one to two days in a week, ahead of the machines engaged in cross-sectioning, in order to make the calculation of the number of cubic yards.

280 Q. It did not want much supervision beside you there, did it?

A. I was not there every week. It needed some one continually to see that they did the work properly. Contractors always want watching.

Q. Was not that the engineer's work, exclusively to see that they did this work properly?

A. It was.

And being re-examined.

There was other work which required the supervision of one or more of the commissioners—something almost constantly—very similar to what you would call the active director in a railroad board.

The first survey which fixed the exterior line showed also the boundaries of the interior lots.

Q. When you say that the commissioners in making the assessment sometimes followed your opinion, do you mean to be understood as saying that they surrendered their own judgment to yours?

A. No, sir; not at all.

Q. In reference to the issue of bonds, do you know, or have you reason to believe, that there was a single bond for which the commissioners received less than its par value?

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A. From the clerk's office of the supreme court at Trenton. It was in the commissioners appointment. It was the same description as is contained in Exhibit E, on the part of E. Simanton.

Q. Mr. Day, Mr. William Vreeland says that the Crane Iron

279 Company's land is not benefited, and cannot be till it is connected with the Hoagland ditch. Is he correct about that or not?

A. Well, he is correct, so far as the connection with some outlet; my own opinion is that I would connect with the Pequest.

Q. You'd have to run over other people's land a great deal, would you not?

A. No very great deal; but very little. There is a boundary line from their land between two other owners almost to the river. You would have to go over lands of other people.

Q. Mrs. Wurts' men that have lived on the farm say they cannot see any improvement in the land from the effect of this drainage. Do you think they are correct about it?

A. No, sir; I do not.

Q. You say this drainage has been a great success. In what respect, Mr. Day?

A. In controlling the water in the Pequest river.

Q. Do you seriously think that Isaac Cummins has been benefited to the amount of eighteen hundred dollars on his land, or that he ever will be?

A. Yes, sir.

Q. About how long were Stephens & Fagin engaged with the dredge in the stream; how many days?

A. They were here about three years. I couldn't tell you how many days they were digging.

Q. Have you no means of telling how many days they were actually engaged in work?

A. Not at this time. No, sir.

Q. How many days did it take you to go over the ground making out that territorial report?

A. I could not tell. I have no account of it. I did not distinguish that from other survey work. I did not go along much with the men who were working the dredging. I would be around where they were at work from one to two days in a week, ahead of the machines engaged in cross-sectioning, in order to make the calculation of the number of cubic yards.

280 Q. It did not want much supervision beside you there, did it?

A. I was not there every week. It needed some one continually to see that they did the work properly. Contractors always want watching.

Q. Was not that the engineer's work, exclusively to see that they did this work properly?

A. It was.

And being re-examined.

There was other work which required the supervision of one or more of the commissioners—something almost constantly—very similar to what you would call the active director in a railroad board.

The first survey which fixed the exterior line showed also the boundaries of the interior lots.

Q. When you say that the commissioners in making the assessment sometimes followed your opinion, do you mean to be understood as saying that they surrendered their own judgment to yours?

A. No, sir; not at all.

Q. In reference to the issue of bonds, do you know, or have you reason to believe, that there was a single bond for which the commissioners received less than its par value?

(Objected to.)

A. No, sir; I do not.

ABM. R. DAY.

Sworn February 7th, 1880. Subscribed before me, this 10th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

JAMES BOYD, a witness produced on the part of the commissioners of drainage, being duly sworn said:

281 I am eighty-three years old. I was one of the original three commissioners appointed in this matter of drainage. I have given my attention to it since my appointment. The last year of the work my health has not been good. The first part of the work I was pretty much engaged in it.

Q. Did you have a conversation with Dr. Roe in reference to your proposed resignation as a commissioner?

A. Yes, sir; I have.

Q. Did you ever entertain the idea of resigning on any other account than on account of your health?

A. Yes; on account of the trouble these land-owners were making.

Q. Do you recollect what you said to Dr. Roe in reference to your resignation?

A. I don't know that I could tell the words.

Q. Did you in that or any conversation with Dr. Roe make any complaint of Mr. Hoagland, one of the commissioners, or say to him in words or in substance that you did not see why Mr. Hoagland should be going so much, or that there was entirely too much running?

A. No, sir. I would like to state a little more than that. There was a good deal of work to do that I did not consider necessary for all the commissioners to do. Mr. Hoagland was willing to do it, and I didn't wish to, and therefore he done considerably more of it than I did.

Q. Do you recollect Mr. Boyd going over Isaac Cummins' land with Mr. Hoagland in company with Mr. Cummins?

A. Yes, sir; I do.

Q. Do you know where Mr. Hoagland put up his horse at that time?

A. I think it was at Mr. Cummins' barn. I think the horse was tied to a post there till we come out of the swamp. Then I think the horse was put in a stable and fed.

Q. Did you tell Mr. Cummins at that time that you did not think the drainage of the Pequest would profit him the first red
282 cent. That you would swear to that, and that you would tell Mr. Hoagland so when you got him by himself, or anything to that effect?

A. There never was any such conversation as that took place be-

tween me and Mr. Cummins at any time whatever. At another time before the dredging was commenced I might have told Mr. Cummins that he had done so much work that I thought his assessment wouldn't probably be as high as the other land, but I altered my mind about it after the dredging was done.

Q. Did you ever tell John Cummins that you didn't see how the dredging could benefit his father?

A. To the best of my knowledge I have never had any conversation with Mr. John Cummins on the subject of that dredging at all.

Q. Did Mr. Ayres, George H. Ayres, come to see you last fall on this matter after the assessment had been made?

A. He did; on his way as he said to Danville.

Q. Can you remember the conversation with him?

A. I can't remember it all. Mr. Ayres complained to me that he ought not to be assessed. It appeared there was a meeting that day of these land-holders at Danville. He said that he wasn't benefitted, and he didn't think he ought to be assessed, and he wanted the commissioners to take it off before he entered this. He didn't want to law if he could help it. I told him that I would speak to Mr. Hoagland and give him the conversation between him and me, but I was not authorized to do anything myself.

Q. Did you tell Mr. Ayres at that time that you had been by his lands and you did not see how they had been benefitted by the drainage?

A. No, sir; I was up there in company with Mr. Hoagland examining those streams, and I may have told him the water did not run off of him as fast as some others.

Q. What can you say as to the success, Judge, of this drainage so far as it affectsbeneficially the lands?

A. I think it has been a success, more than I expected in the first place.

283 Q. Have you or not acted as treasurer of the commissioners since your appointment as commissioner?

A. Yes, sir; I have.

Q. How were the contractors paid for their lobor?

A. The first work that we had done was paid in money. The last contractors were settled with every month, the estimate made out by Mr. Day, and they would come to my house, or where I live, and I gave them my check for the amount.

I never heard of a needle mill on Schmuck's brook. There was a wooden mill and afterwards a tannery.

And being cross-examined, said:

That wooden mill stood where the old tannery was, on the left-hand side of the road, opposite the saw-mill, a little to the north of where our big ditch commences.

I often had conversation with Dr. Roe on the subject of the drainage. I never told him what my fees amounted to. I never went over to see the Doctor about it. After we had run the lines around Dr. Roe's farm, I went there at his request. He said we had taken in too much land and he wanted to see the commissioners about it.

Q. Do you recollect going over to Dr. Roe's house about three years ago to talk with him about the drainage in which you referred to the expense of the work?

A. I never went to Dr. Roe's house to have a talk at all; our talk was generally out; he talked so much I wanted to keep out of his way as much as I could.

Q. Did you ever have any conversation with Dr. Roe in which you said that you thought the costs of superintending were too much?

A. I don't know that I ever said anything to Dr. Roe about the costs of superintending, but I may have said to him and to others that I thought it was costing a great deal of money, and I'll give you my reasons if you wish.

Q. Can you tell, Judge, what the whole amount of your bill was as commissioner?

284 A. I can't tell exactly; a little above six hundred dollars. There is a bill that has never been counted over not included in that; it is since our last settlement; it is, perhaps, fifty dollars; it is for going all over this ground again since our report was made.

After the dredge got in I only went occasionally; I didn't think it was necessary.

I thought it was the engineer's work to see that that dredging was done right, but it was necessary that some one of the commissioners should go occasionally; I knew Mr. Hoagland did go.

I acted as treasurer throughout the whole thing.

Q. You say you gave your checks on the Stevens & Fagin contract—on what Bank?

A. The Hackettstown Bank.

Q. Do you know how much you paid those men?

A. I can't tell now; the secretary, Mr. Day, kept the accounts; I kept no account of the checks; in the beginning I kept an account of everything but there was too much for one to do.

Q. Where did you get the money from which was in the Hackettstown Bank on which you drew to pay these accounts of Stevens & Fagin?

A. We got money from Mr. Scranton, but it came second-handed to me through Mr. Hoagland, and we got money from Mr. Hoagland himself.

Q. How much money did you get of Scranton?

A. I don't know now; I did once.

We borrowed money out of the Hackettstown Bank.

Q. How much?

A. Different times—several thousand dollars; I can't tell you how much.

Q. How did you pay it back?

A. Some of it isn't paid back yet.

Q. Do you know how these $75,000 of bonds which you speak of in your report were negotiated?

A. I do not remember; I never sold but one myself alone; it was a hundred dollar bond.

Q. Now, Judge, didn't you understand that Stevens & Fagin were to be paid in bonds; wasn't it so understood?

285 A. No, sir; I never understood any such thing at all.

Q. Well, they got bonds, didn't they?

A. I don't know whether they did or not; I never saw them have any, and they never told me that they had any.

Q. Did you never have any conversation with Isaac Cummins at all, at his house there about the benefit of this drainage to him?

A. Yes, sir; there was a conversation there, but I can't repeat it.

Q. Mr. Day drew his last report that you sent to the Supreme Court in June last; June, 1879, did he?

A. He, acting as secretary, done the writing.

Q. After the first assessment was set aside, what did you do in making the second assessment?

A. The commissioners, altogether with Mr. Day, went over the different tracts, and examined them. I don't know how much is unpaid in the Hackettstown Bank yet.

Q. Upon what principle did you assess the Crane Iron Company for the amount you have?

A. The Crane Iron Company's land lays inside of our exterior line, and all that swamp is benefitted by the drainage, by doing some work themselves.

Q. Well, now, how did you fix the valuation you did on Mrs. Wurts' land?

A. We examined Mrs. Wurts' land, and the lowering of the bed of the creek gives them all an outlet to it. The Crane Iron Company's land lies a little back, but we can't help that.

Q. You examined Mr. Geo. H. Ayer's ground, didn't you, and came to the conclusion that Ayres was not benefitted much, didn't you?

A. I went up there with Mr. Hoagland one day to examine those streams. When we got to Mr. Ayers' land I couldn't see that the water was drawing off there as fast as it was below. There was no digging there.

Re-examined.

Q. You say there was $75,000 of bonds issued. Did the
286 the commissioners receive the full amount of them at their par value?

A. We never parted with any bonds at less than par.

Q. Did you receive the $75,000 for the $75,000 of bonds issued?

A. I can't answer that exactly. It did not all come in my hands.

Q. Have you an account?

A. I kept no account. There is a treasurer's account. It is in the hands of Mr. Day.

Q. Did he receive the subscriptions for the bonds?

A. He received more of them than anybody else.

Q. Did he keep your account as treasurer all the time?

A. Not all the time. The first part I did; the last part he did.

Recross-examined.

Q. You said that the drainage was more of a success than you anticipated. In what respect is it a success?

A. It has dried the lands a great deal more than anybody would expect.

JAMES BOYD.

Sworn and subscribed before me, this 10th day of February, A D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

AMOS HOAGLAND, a witness produced on the part of the commissioners, being duly sworn, said:

I reside in Mansfield township, this county, near Townsbury. I am one of the original commissioners.

Q. Will you state, if you please, Mr. Hoagland, the principle upon which this assessment was made?

A. The principle upon which we made it was this: Ascertaining first the situation of the land. That was whether it was near
287 by our open drain or farther off. Taking in consideration always the advantages and disadvantages of the situation, making allowance for what would have to be done that they might have the benefit of our work.

Q. Did you, or not, then, endeavor to lay the assessments upon the lands according to the benefit which, in your judgment, each parcel of land would receive?

A. We did.

Q. So far as you know, was or was not that the principle which guided the commissioners?

(The last two questions objected to by Mr. Shipman.)

A. That was certainly the principle.

Q. Have you been present at the examination of the witnesses on these exceptions mainly?

A. I have been generally present; not always.

Q. Do you now know of any reason leading you to change your mind in any respect as to the assessments laid upon these lands?

A. After we heard the objections the commissioners met together and carefully looked over the different tracts of land, and we could see no cause why we should change the assessment of any of them, and I haven't seen any since.

Q. Why were the lands assessed below the steam mill bridge?

(Objected to.)

A. They were within our exterior line, and were directly benefitted.

Q. Why were the lands assessed which lie above high-water mark?

A. We thought them benefitted from the description as given by Mr. Day in his evidence to-day.

Q. And why were the lands assessed above where the dredging stopped?

A. On account of benefits derived from the opening of the channel below.

288 Q. Did the commissioners build a new bridge at Vienna?

A. Yes, sir; Edwin Bulgin built it. I didn't hear Mr. Green's testimony about it.

Q. Mr. Green said he offered to build the bridge for $500, and you replied if you couldn't get it built for less than that you would send it up. Do you recollect your conversation with Mr. Green?

A. Yes, sir.

Q. State what took place, and give the reason why he didn't get the building of the bridge, if there was any.

A. Mr. Green is correct in what he says there, and the reason that he didn't get the building of the bridge or that we did not set it up at sale was that I was away from the work a day or two, and perhaps three days. The dredge got along much faster than I expected, and before I got back Mr. Day found it necessary to have the bridge built immediately and put out the building of the bridge to Mr. Bulgin, not knowing any of the conversation that passed between Green and me.

Q. Did you have any conversation with Mr. Simanton at any time about the effect of the drainage upon his land? If so, state it.

A. I did have; he said it was a magnificent work and he was surprised at the good it had done; I don't know that he said "on his land;" I am not sure about that.

Q. Something was said by Mr. Garrison about the change of the exterior line over Mr. Tim's land; will you tell us how that came about?

A. Judge Boyd and Mr. Garrison were running that exterior line on that part of the work, and when they got down in that neighborhood I believed they worked a day out, but were dissatisfied with what they had done. At the request of both of them, Garrison, Mr. Day, and I, with the chain-bearers, went; we found, as I knew before I went, that that whole country was flat and more or less filled with bog holes, which made it very difficult to determine where to run the line. We, however, felt satisfied that we hadn't taken any more than ought to have been taken in.

289 Q. Mr. Isaac Cummins says in his testimony, when sworn, that in seventy-six or seventy-seven you and Judge Boyd went with him over his lands to examine them. Do you recollect that?

A. Yes, sir.

Q. He says that after the examination he and Mr. Boyd had a conversation; that Judge Boyd told him he didn't think the drainage would benefit him a single cent, and that he would swear to it; that when you came with your horse he (Mr. Cummins) told this conversation to you. What have you to say about that? Did any such conversation take place?

A. If I remember right, the Judge walked on after I got my horse. There was a conversation. Mr. Cummins told me the Judge told

him he wouldn't be benefited a red cent. The Judge was not present at the time when he told me this. After this Judge and I was in my carriage coming by there, and we stopped, I think, at the beck of Mr. Cummins. He then went over the same thing, and the Judge answered: I said if it was, as you said it was, you wouldn't be benefitted one red cent.; but as I see that it is, it is very different.

Mr. Day acted as secretary to the commisioners; he received the subscriptions for the bonds issued by the commissioners.

And being cross-examined, said:

Q. State, if you please, the principle on which you assessed benefits to the Crane Iron Company.

A. The principle is precisely the same that I have just stated.

Q. How did you come to the conclusion that they were benefitted to the amount of your assessment when their land was so remote from the Pequest, and they were compelled to cross other people's land to ditch to it?

A. Our assessment we intended should be low enough for them to dig their own outlet to ours where we had no right to dig.

290 Q. How did you fix the value upon Eli Lundy's land?

A. We did not think that difficult at all, for it lays right along our work.

Q. How did you fix the assessment upon Mrs. Worts' land?

A. In digging the Pequest we go directly across that land, which leaves them all the advantages which anybody could have.

Q. Where was you when you made out your assessment of September last?

A. I think we met at Mr. Johnson's. Judge Boyd being unwell, we adjourned to his house. After we got there we were all three together.

Q. Did you and Mr. Johnson agree upon any assessment in the absence of Judge Boyd?

A. I don't think we did.

Q. Will you please to tell, Mr. Hoagland, whether you negotiated any of these bonds in New York?

A. This was left with Mr. Day, our secretary.

Q. Mr. Hoagland, please to tell whether there wasn't some understanding of some kind that these contractors, Stevens & Fagan, were to take these bonds.

A. Never, to my knowledge; and it could not have been without.

Q. Well, they had a very large number of these bonds, had they not, sir; and do you know where they got them?

A. I neither know that they had a great lot, nor where they got them.

Q. How many bonds did you yourself personally sell, if any?

A. I don't think I sold any. I have no recollection of any now. It must have been very small, if at all.

Q. Did you pass over any bond yourself to Stevens & Fagin or William Vreeland?

A. No, sir.

Re-examined:

I have a subscription-book for the bonds. I forgot to bring
291 it with me.

I don't recollect how many subscriptions I have on my book.

Mr. Day took the principal subscriptions for the bonds. The bonds for safe keeping were deposited in the Hackettstown Bank.

Q. Had he, or not, a written order upon the bank for the delivery of the bonds to Mr. Day as they were subscribed for?

A. He had.

Q. In making your assessment upon the different tracts of land, was there, or not, a difference accordingly as the lands laid upon the river, or one of the ditches you opened, or were remote from either?

(Objected to.)

A. Yes, there was a difference made.

Q. Was the question of probable productiveness after the drainage taken into account?

A. Yes, sir; it was.

Recross examined:

Q. Do you know where Fagin & Stevens are?

A. I do not. I have heard, but do not know.

Q. The assessment upon the Crane Iron Company was as high as any per acre, was it not?

A. No, not as high as some others. I don't remember precisely the amount of their assessment per acre.

AMOS HOAGLAND.

Sworn and subscribed before me, this 10th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

WILLIAM L. JOHNSON, a witness:

292 I live in Hackettstown. I am sixty-two years old. I was not one of the original commissioners. I was appointed in place of Dr. Clark about January, 1875. I was sworn, I think, in April, 1875. The exterior line was run before that time.

Q. In what way did the commissioners raise their money for their work since you have been a commissioner?

A. By the disposal of bonds.

Q. Who received subscriptions for the bonds?

A. Mr. Day, as their secretary.

I do not know myself to whom the bonds were disposed of.

I have acted with the other commissioners in making the assessment which they laid.

For that purpose we examined the location of the lands and their distance from the stream which had been lowered.

I heard Mr. Hoagland and Mr. Day sworn as to the principle on which the assessment was made.

They stated correctly the principle, as I viewed it.

I have heard nothing in the examination of the witnesses here which has led me to change my mind as to the correctness of the assessment.

And being cross-examined, said:

I did not sell any of the bonds myself. I do not know where Fagin & Stevens or either of them is.

Q. How much time have you given to the making of the assessment?

A. I have been over the lands included within the exterior line and examined them all, and met in conference with the commissioners in mading the proportionment for the work done. I couldn't positively say how many days I have spent in the work, probably thirty to fifty days.

Q. Is that all the time you have spent, and for which you have made a charge?

293 A. That is all, as near as I can recollect at present. It is a mere estimate.

Q. Can you tell how you fixed the assessment on the lands of Isaac Cummins?

A. According to the benefits he derived from the lowering of the bed of the river and the natural drainage of the meadows.

Q. How did you think he would derive any benefit from the lowering of the Pequest?

A. His lands were boggy and wet from the natural overflow. I had never been upon his lands particularly to notice his lands before I became a commissioner. I have frequently been along there.

Q. How often have you been on these lands since they were assessed?

A. Several times.

Q. Do you know whether these contractors, Stevens & Fagin, got any of these bonds?

A. I don't know.

Q. Was you present when the contract was made with them?

A. I think the first contract was made before I was appointed.

Q. Was it ever talked about or understood among the commissioners that Stevens & Fagin were to take these drainage bonds?

A. It was not.

WILLIAM L. JOHNSON.

Sworn and subscribed before me, this 10th day of February, A. D 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

ABRAHAM R. DAY, a witness produced on the part of the commissioners, being duly sworn, said:

I, as secretary, received the subscriptions for the drainage
294 bonds. I have a book containing most of the original sub-

scriptions. Mr. Hoagland received some, and they were transferred to my book.

Q. State, if you please, the mode in which the bonds were kept, and how they were issued.

A. When the bonds were first received from the engraver in New York, and signed and sealed by the commissioners with their seal, they were deposited in the safe of the Hackettstown Bank, with instructions to make no delivery, if any, except to one of the commissioners. Judge Boyd getting sick, and making it necessary for myself to assist him in keeping his accounts as treasurer, the commissioners made an order to the cashier to deliver the bonds to me as needed on subscriptions from time to time. Whenever a subscription was made, and the equivalent in cash or check or draft—sometimes a note—of a like amount with the subscription for the bonds, the bonds were delivered to the subscriber. Most generally in the earlier by Judge Boyd or myself or Mr. Hoagland. More recently I have done it all.

(Being shown a book, said:)

This is an original subscription for the bonds, and contains also a statement of the bonds which were subscribed on a book which Mr. Hoagland had.

Q. I see here the names of Clinton Stevens and Ansel Fagin, as subscribers to the bond. Were they the contractors, Stevens & Fagin?

A. They were.

Q. Now state what they gave for the bonds in each case, if they received them. Were they paid them on their contract or not?

A. They were not. They made a subscription and gave either a draft or note, either at thirty days or some other short time, which was discounted at the Hackettstown Bank, and the proceeds placed to Judge Boyd's credit. Then the bonds were delivered to the subscriber.

Q. Had they made any proposition to the commissioners to place the bonds for them?

295 (Objected to, as hearsay.)

A. They had, in 1875, when they took the contract. The commissioners were beginning to find difficulty in disposing of the bonds at par, and fearful lest these contractors should sue for over-due estimates, the commissioners instructed me to go [to] Mr. Vanatta, our counsel, and asked him to draw up a section to put in the contract which would protect the commissioners in regard to law-suits for over-due estimates, which section required them to wait till the commissioners could dispose of the bonds so as to raise the moneys to pay the estimates, and this was inserted in the contract. The contractors strongly assured the commissioners that they could and would place these bonds among their moneyed friends in New York and elsewhere. At first we required them to bring these parties themselves here to Hackettstown to make subscriptions, pay the equivalent, and take their funds, but after signing the contract they

claimed that this was too much trouble and wanted one of themselves to make the subscriptions, to which the commissioners finally agreed. They brought some strangers up with them, two or three times perhaps, and at other times they would not themselves be here, and wished me to make the subscriptions, which I did.

(Mr. Shipman objects to all that portion of the foregoing answer which contains conversations with Mr. Vanatta; to all that which relates to what Mr. Vanatta wrote and was inserted in the contract, because it is the contents of a paper not produced, or the loss of it shown; also to the contents of the written order on the bank.)

Q. When these subscriptions were made by you in the absence of those people, how did you get the check or draft for the proceeds?

A. As a general thing they came up within a few days and delivered the note or draft in a few days, and I had gone through
296 the routine of getting the bonds out of the bank in the mean while. I wish here to correct what I said about the bonds being sealed. They were not sealed till they were taken from the bank.

Q. Did you ever deliver bonds without receiving their equivalent at their par value?

A. No, sir.

Q. In whose name was the account at the bank kept?

A. Judge Boyd's.

And being cross-examined, said:

Q. Mr. Day, look at that book and tell us how many are in the original handwriting of the subscribers themselves?

A. Twenty-three in all.

Q. Give the names and amounts and dates of subscriptions.

Abraham R. Day, $300, Sept. 21, 1874.
Abraham R. Day, $300, Dec. 1, 1874.
Abraham R. Day, $1,200, July 13, 1875.
Abraham R. Day, $1,000, Sept. 11, 1875.
Abraham R. Day, $100, Dec. 1, 1875.
Abraham R. Day, $200, June 19, 1876.
Abraham R. Day, $1,700, July 8, 1876.
Ansel Fagin, $1,000, Sept. 15, 1876.
Thomas Cuming, $6,000, Dec. 14, 1876.
Amos Hoagland, $1,600, Jan. 22, 1877.
T. P. Frone, $1,700, Feb. 5, 1877.
Clinton Stevens, $2,100, July 5, 1877.
Abraham R. Day, $2,400, Sept. 7, 1877.
Ansel Fagin, $1,200, Oct. 10, 1877.
Clinton Stevens, $2,700, Dec. 12, 1877.
Ansel Fagin, $1,200, Dec. 12, 1877.
Abraham R. Day, $1,600, Jan. 24, 1878.
Justin Arnold, $3,500, June 27, 1878.
Philip Arnold, $4,500, Aug. 10, 1878.
Philip Arnold, $1,900, Sept. 11, 1878.

Clinton Stevens, $3,900, Nov. 18, 1878.
Clinton Stevens, $5,000, Jan. 2, 1879.
Abraham R. Day, $200, May 15th, 1879.

297 Those are all the originals in this book, as I understand it. The others are in Mr. Hoagland's book.

Q. Give those that are copied from Mr. Hoagland's book into yours, with names, dates, and amounts, as before; and also the name of the person who wrote them in your book.

A. I wrote them in my book myself. They are as follows:

S. T. Scranton & Co., $2,000, Sept. 21, 1874.
Amos Hoagland, $200, Sept. 21, 1874.
James Boyd, $200, Sept. 21, 1874.
R. L. Garrison, $200, Sept. 21, 1874.
D. V. Maring, $200, Oct. 15, 1874.
S. T. Scranton & Co., $2,400, Oct. 12, 1874.
S. T. Scranton & Co., $1,800, Nov. 16, 1874.
S. T. Scranton & Co., $1,000, Nov. 18, 1874.
Amos Hoagland, $200, Dec. 1, 1874.
S. T. Scranton & Co., $1,600, Dec. 4, 1874.
Amos Hoagland, $200, Sept. 11, 1875.
Clinton Stevens, $2,500, Dec. 1875.
Clinton Stevens, $5,100, Jan. 17, 1876.
R. L. Garrison, $300, Dec. 8, 1875.
Clinton Stevens, $1,000, Feb. 18, 1876.
Clinton Stevens, $1,000, Mar. 15, 1876.
Clinton Stevens, $1,000, May 8, 1876.
Clinton Stevens, $1,200, May 12, 1876.
Ansel Fagin, $1,700, Sept. 19, 1876.
Clinton Stevens, $1,300, Oct. 9, 1876.
Ansel Fagin, $4,300, Oct. 9, 1876.
Ephraham Simanton, $300, Oct. 25, 1876.

Clinton Stevens and Ansel Fagin, as you understand me, were the contractors, who got the $56,000, or thereabouts.

Q. Who is Thomas Cumming, Justin Arnold, and Phillip Arnold?

A. Thomas Cumming is a gentleman living in Hackensack, or who did live there, and who, I think, at first was interested in this contract originally, but soon retired. Justin Arnold and
298 Philip Arnold—I never knew whether they had any interest in it or not; I dont know where they live.

They appeared to be friends of Fagin and Stevens; in fact, one of them stayed here some three or four weeks, one time, assisting Fagin.

I don't know whether it was through Fagin and Stevens' influence that their subscription was obtained.

I think it was Philip Arnold who stayed here and helped Fagin three or four weeks. He superintended a part of the work.

Mr. Fagin, I think, introduced them to me.

They gave this draft or note before they got their bonds. The

subscription was made and draft or note given at the same time; it was one transaction.

The drafts were made payable either to my order or Judge Boyd. If a note, it was payable to myself or Judge Boyd; if a draft, it was drawn on some parties in New York. The notes were made payable at a short day; the drafts were on sight. But there was but one or two drafts, most of them were notes. The note was by the subscriber. I took the notes and gave them the bonds, though they were strangers to me, but I had Messrs. Stevens & Co.'s assurances in regard to these people.

Those notes I put in the bank to the credit of Judge Boyd, as treasurer.

Q. All this business you carried on yourself without consultation with the commissioners, did you?

A. No, sir.

Q. Why, they say they sold no bonds themselves. How do you explain that?

A. I don't know what they meant by such talk; I presume they considered I done it as their agent.

Q. Have you anything to show when the payments were made to Stevens & Fagin?

A. Yes, sir; we have.

Q. Where are they?

A. I have them in my satchel.

(The witnesss produced a bundle of papers.)

299 Being shown voucher No. 351, being estimate and receipt of Stevens and Fagin, is asked:

Q. Is that the last estimate and receipt?

A. That is the last.

Q. And when was that payment actually made?

A. I presume on the date of it, January 2d, 1879; the receipt of Stevens & Fagin is dated 1878 by mistake.

(The paper, together with twenty-two others, offered in evidence by Mr. Shipman, counsel for exceptants, and are marked exhibits on the front of the exceptants.)

Q. When was it that you were sent to Mr. Vanatta?

A. Sometime in May or June, 1875.

Q. When was it that Stevens and Fagin desired to sell these bonds in New York?

A. That was in November, 1875, when they first wanted the contract.

Q. Then it was that they offered to get rid of the bonds?

A. Yes, sir; they were strangers to me, and I went to New York to the Merchants' Hotel, which is the headquarters of contractors, or used to be, to make inquiries as to their reliability.

Q. It was after you received these representations from them that these contracts were entered into with Stevens and Fagin, was it?

A. Yes, sir.

Q. These several subscriptions that were made by yourself, were they made with the understanding with these men that they would raise the money on them?

A. They were.

Q. But they did raise the money accordingly?

A. Yes, sir.

Q. And they took the bonds instead of you?

A. I said, raise the money; they paid these notes they gave me; that's the way I got the money; and they took the bonds for
300 the notes, and I passed the proceeds of the notes to the credit of Judge Boyd, as treasurer in the bank.

A. Was this man Cummins ever up here on the work?

A. Yes, sir; I don't remember seeing him but once.

Q. About what time was that?

A. That was when he made this subscription.

Q. How long did he stay up here?

A. But one day.

Q. How long was he interested in the work?

A. That I do not know.

Q. Bulgin built the Vienna bridge, did he?

A. No, sir; Mr. Page built that; they had Bulgin employed?

Q. I understood, Mr. Hoagland, you put it out for Bulgin?

A. That's a mistake; I can explain if you choose.

Q. Did you put it out to Page?

A. Yes, sir.

Q. When?

A. In the fall of seventy-four.

Q. For how much?

A. That I don't remember.

Q. Well, was there a written contract?

A. There was; it is here with the rest.

Mr. SHIPMAN: Let me see it.

(The witness produced it, and says he referred to the contract with Page, but not in regard to the bridge, but the bridge was put in their estimate for their work. The contract for the bridge was verbal.)

Q. Did Page and Co. first take a contract for the whole work?

Q. No, sir; for the outlet only.

Q. Well, who had the dredge?

A. John S. Little, to whom the contract had been assigned by Page. John S. Little bought the machinery and built it there. It was built on the banks and launched. Stevens & Fagin took
301 the contract and dredge both off his hands; he threw up rather, and a new contract was made with Stevens & Fagin.

Q. Do you remember how much you put out the bridge for?

A. No, sir; I do not.

Q. Who built the bridge?

A. Mr. Page built it, as far as we are concerned. My recollection is they did all but the superstructure, and sub-contracted that to Bulgin; it is some six years ago.

I don't know where the first contract with Stevens & Fagin is; I think that that was an assignment of Mr. Little's contract. It may be that Mr. Stevens destroyed that first contract. He wanted to destroy them all when they were completed, but I wanted to keep them. At any rate, I do not know where the first one is now. The three contracts of work embraced different parts of the work.

Q. Why didn't you put all the work in one contract, instead of in three?

A. For the reason that the manager's plan by which the commissioners were working required them first to improve the stream from first bench to a certain stake, a certain distance above and near Steam Mill bridge. We dared not put it all out at once.

Q. Well, now, these three contracts that were made with Stevens & Fagin, they were not advertised, were they?

A. No, sir; I think not, but I would not be too sure about that, except in regard to the last one. That, I am certain, was not.

Q. Do you know how Bulgin was paid for his work there on that bridge?

A. Page paid him.

Q. Did Bulgin have any of the bonds?

A. Not to my knowledge.

Q. Do you know where Stevens is?

A. I don't know; I suppose he is in Mexico. There is where he told me he was going.

Q. Do you know where Fagin is?

A. I suppose he is in the same place.

302 Being re-examined by Mr. LITTLE, said:

The work which Stevens & Co. did under their last contract was not included in the notice marked Exhibit 2, on the part of the commissioners.

Q. Were the contracts made with Stephens & Fagin for different parts of the work, and made in different years, or not?

A. They were.

Q. Have these subscriptions for bonds which were made by Stevens & Fagin anything at all to do with the contract made with them?

Objected to.

A. No.

Q. Had, or not, the first contract with them been made before any subscription was made by them for bonds.

A. It had been made before.

Q. Were they, or not, by their contract under an obligation to subscribe for bonds or negotiate them?

Objected to, as calling for contents of paper.

A. None whatever.

Q. Then, if I understand you, the whole of this matter of the subscription for the bonds by Stevens & Fagin is that when they took the contract they gave the commissioners assurance that they could

negotiate the bonds, and so to a very considerable extent, and so provided the commissioners with money, out of which they were paid for their work.

Objected to, as leading and very bad.

A. They did so.

Q. Did it make any difference to the commissioners or to the land owners whether they retained the bonds they subscribed for or sold them, so long as they paid the notes or drafts which they gave for the bonds?

303 (Objected to, as leading and as calling for a conclusion of law.)

A. None at all.

(Witness being shown the last contract with Stevens & Fagin, is asked if it is similar to the other contracts in every respect, except in regard to the work to be done and prices paid.)

(Objected to, as leading and as giving contents of the other contracts.)

A. It is.

Q. Are you sure it is similar as to the time and mode of payment?

(Objected to.)

A. It was.

(The contract was offered and marked Exhibit III, on the part of the commissioners.)

(Counsel for the commissioners also offered another contract with Stevens & Fagin, which was marked Exhibit IV, on the part of the commissioners.)

Recross-examined.

Q. When did Page & Co. throw up their contract?

A. In the spring of 1875.

Q. Mr. John H. Little gave up his contract before Stevens & Fagin entered into theirs?

A. No, sir; he did not. He did not go on while they were
304 working under theirs. The giving up of his and the entering into theirs were simultaneous transactions.

ABM. R. DAY.

Sworn and subscribed before me, this 10th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

(Mr. Little declared his testimony closed.)

HENRY S. HARRIS,
*Supreme Court Commissioner.*

305 *Testimony—Sur-Rebuttal.*

ABRAHAM R. DAY, a witness produced on the part of the commissioners, being duly sworn, testified as follows:

I have made an examination to see how many bonds I, myself, subscribed for since I was sworn before; I find the amount was $9,000.

Q. You were asked whether the several subscriptions made by you were made with the understanding with Stevens and Fagin that they would raise the money on the bonds subscribed by you, and your answer was, "They were." Can you tell of how many of your subscriptions that was true after your examination?

A. Only one; one subscription for $2,400.

Q. For whom were the other subscriptions?

A. They were all my own

Q. You said in your cross-examination "I gave the bonds in some cases to the contractors, who took them to the city and brought me back the money on them." Can you tell from your examination in how many instances that was done for you?

A. Only the single one already mentioned.

Q. Before the contract was made with Stevens and Fagin, did you, as engineer, make any effort to find out the value of the work to be done?

(Objected to, as not rebuttal.)

A. I did.

Q. Were they or not the lowest bidders for the work? If not, state how it came to be given to them.

306 (Objected to, as not rebuttal and irrelevant.)

A. They were not, and it was given to them because Mr. S. V. Cole, the lowest bidder, had not sufficient standing or responsibility that we dared trust the execution of the work to him.

Q. What was the difference between his proposal and theirs?

(Objected to, as irrelevant and giving the contents of papers.)

A. There was no difference in the work that lay above water, and ten cents per cubic yard in the excavation below water line.

Q. From whom did you get your information as to Mr. Cole's standing?

(Objected to.)

A. From Mr. S. T. Scranton at Oxford, and certain individuals in Scranton, Pennsylvania, where he lived.

Q. When the contract was given to Fagin and Stevens, was there any agreement or understanding, express or implied, that they would accept bonds in payment?

(Objected to, as not rebutting and irrelevant.)

A. There was not.

Q. Were they under any obligation, legal or moral, to negotiate the bonds for the commissioners?

(Objected to, for same reason and calling for the same opinion of the witness.)

A. None whatever.

Q. What benefit did they then receive from taking the bonds or negotiating them, if any?

(Objected to, on same grounds.)

307 A. They hastened up the payment of their estimate under the terms of the contract—no other that I know of.

Q. So far as you know, did Judge Boyd, as treasurer, keep any other account than the one at the bank?

(Objected to, for same reasons.)

A. Not while I had anything to do with him as treasurer.

Cross-examined:

Q. You mean to be understood, Mr. Day, as saying, do you not, that you believed what you testified to the other day was true.

WITNESS: In regard to what?

Mr. SHIPMAN: All your testimony.

WITNESS: I did.

Q. Well, what part of it do you now think was incorrect?

A. When I was inquired of in regard to my own subscriptions, and that portion of them which I sent to Mr. Stevens in New York. I had not seen the record to examine it for two or three years back, and thought I had done that several times, as Mr. Stevens was writing me requesting me to do so, and I was under the impression that I did do it several times, which carried my subscriptions up, as I then said, to fifteen or sixteen thousand dollars; but a close examination of the book now shows only nine thousand dollars in all, and but one of those sent to Mr. Stevens.

Q. You had your subscription book before you the other night when I cross-examined you, had you not; and gave in detail every one of the subscriptions, did you not; and they were received in your testimony, were they not, as taken from the book at the time?

A. That night they were.

Q. Have you consulted any other book than that since your testimony was signed?

308 A. I have seen Mr. Hoagland's book.

Q. You gave also in your testimony a copy from Mr. Hoagland's book, did you not?

A. Yes, sir.

Q. Do you mean to be understood now that you paid out of your own private funds $6,600 for these bonds?

A. Yes, sir.

Q. When did S. V. Cole put in his proposal?

A. At some time before the expiration of the time limited. Within one week of the expiration nearly all were received.

Q. I understood you to say the other day that there was but the one advertisement for proposals, and that that was the one put in

evidence by the commissioners. You mean to stand by that evidence now, don't you?

A. I do.

Q. You testified the other day that you did not think there was any advertisement for proposals at the time Stevens & Fagin got their contract, that you were not certain about the two first contracts, but that you were about the last. Was that evidence true or not?

A. It was true. I would rather you would refer to the evidence. I don't think I said what you have got over there. The first was advertised and the two last were not. I said so then and I say so now.

Q. How long since your last examination is it that you came to the conclusion that you had made a mistake?

A. I think it was Friday evening following the adjournment. I worked up the figures on the books and discovered the error.

Q. Didn't Judge Boyd keep a treasurer's book of the amount of monies received and disbursed, or you keep it for him?

A. Yes, sir.

Re-examined:

309 That book I had sometimes at my house and sometimes it was at Judge Boyd's.

ABM. R. DAY.

Sworn and subscribed before me, this 18th day of February, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

(Counsel on both sides declared their testimony closed.)
February 18th, A. D. 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

310 *Testimony of Nelson Banghart from Former Case.*

NELSON BANGHART, a witness produced on the part of the commissioners, being duly sworn, on his oath saith:

I work on a farm; am fifty-three years old. I live near Danville now.

Q. Do you know the farm now owned by the Crane Iron Company, on the west side of the meadows?

A. Yes, sir.

Q. How near did you ever live to that farm?

A. On the farm adjoining it.

Q. Adjoining it which side?

A. On the southwest side. Bulgin & Swayze now own it. I lived there nearly thirty years. I left there about nine years ago. I don't think I have been on the Crane Iron Company farm since. I have been in sight of it. I saw frequently, and was over quite a good deal, the farm of the Crane Iron Company while I was living on the Swayze & Bulgin farm.

Q. Was there any of that land—I mean that which is now the Crane Iron Company's property—low, wet, or boggy land?

A. There was a portion of it.

Q. On which side of the road leading to Johnsonburgh?

A. On the southeast.

Q. Did the wet land come up to the road or not?

A. It did not, quite.

Q. About what was the width of the strip of dry land between the road and the wet land?

A. At one corner it was not over fifty yards; at the other corner it was on one hundred or over.

311 Q. Was it easy to see where the dry land stopped and the wet land began, or not?

A. For the most part of the way it was quite easy.

Q. Now, tell us how that land southerly of the dry land was; describe it fully as you can.

A. Well, it was wet land, sour, boggy; that is about the amount of it, I guess.

Q. About how many acres of that kind of land was there in what is now the Crane Iron Company's land, near as you can tell?

A. I couldn't tell, for certainty; probably 20 or 25 acres; I couldn't tell.

Q. Which had the most of that kind of land, the Swayze and Bulgin property, or what is now the Crane Iron Company's?

A. I think the Swayze and Bulgin property had rather the most.

Q. What use was made of this wet, boggy, and sour land which now belongs to the Crane Iron Company?

A. Well, a great portion of it laid out to common pasture ground; some along the shores were fenced in for mowing ground.

Q. What kind of grass grew on that which was south of the dry land?

A. What we commonly term wild or bog grass.

Q. Did the water ever stand between the bogs?

A. A good deal of the time it did; common wet time.

Q. Did you ever see any overflow or backwater from the Pequest creek in the neighborhood of the land now belonging to the Crane Iron Company; and, if so, how far up did it come up on that land?

A. Well, I don't think I saw it back water from the creek on the land.

Q. Was any of it under water at that time; and, if so, how much of it was covered with water?

A. I never seen it clear under water; the lower lot is very wet between the bogs.

Q. Did you ever know any of that land south of the dry land to be cultivated; and, if you did, when, and by whom?

312 A. Mr. Albertson improved some; got it into meadow; never raised any grain on it.

Q. Did he plough it?

A. No, sir.

Q. What did he do to improve it?

A. First place he ditched around, then he cut the bogs off, seeded it and harrowed it.

Q. About when did he do that; about how long ago?

A. Well, it was 20 years, or a little over.

Q. How did it get on after that?

A. Well, he mowed it for a few years; it done very well; I should say for three or four years.

Q. About how many acres did he mow?

A. I should say 8 or 10 acres, in that neighborhood.

Q. How was the grass when he quit mowing it?

A. It got to be very short, kind of a fine grass, so that they didn't consider it worth mowing any more then.

Q. Did any bogs reappear in the lands that were mowed, or has it remained without bogs from that time to this?

A. Bogs started up again.

Q. How were the ditches at the time he stopped mowing?

A. Well, they began to fill up, but still they were ditches there yet.

Q. Did those ditches extend from north to south or from east to west?

A. From north to south.

Q. How long were they, about?

A. Well, from 30 to 40 rods, somewhere in that neighborhood.

Q. How many of them had he?

A. He had two of them that run from north to south.

Q. How near was the most westerly of those ditches to the line of the Bulgin and Swayze farm?

A. One of them was on the line; I helped cut it.

Q. How near the road did that ditch begin?

A. Well, I should think 25 or 30 yards.

Q. And it extended southerly how far, as near as you can tell?

313 A. I should think near 40 rods.

Q. And what was then there at the end of the 40 rods?

A. It just emptied iuto the meadow, a marsh; it was the lower end of his tract at that time; he bought more afterwards.

Q. Did he afterwards buy another tract south of that?

A. Yes, sir; I am not able to answer of whom, but think it was of Isaac Harris' estate.

Q. About how many acres were there in that lot?

A. Couldn't tell; never heard say.

Q. Was it as large as the piece of wet ground he had north of it, or not so large?

A. I couldn't say for certain, but think not so large.

Q. About how long is it since he got that lot of the Harris estate, near as you can tell?

A. I couldn't say at present how long it is; I don't think he got it from Harris; I guess he got it at the same sale that Harris got his portion; I can't tell when or how he got it with certainty.

Q. Is it your recollection that he got that lot after he did the ditching you have spoken of?

A. Yes, sir.

Q. Now tell us what kind of land that additional lot was.

A. Well, it is regular meadow, boggy, wet land.

Q. Was there, or not, water generally standing between the bogs on that lot?

A. There was generally water on that lot.

Q. As you went along the line between the upland and the lowland on this property now belonging to the Crane Iron Company, was there near that line a streak of springy ground, a streak of ground out of which the water oozed or appeared to spring up?

(Objected to, as leading.)

A. Yes, sir; it was springy most of the way along.

Q. Was it more springy than the ground was a few yards south of that line, or was there no difference?

314 A. Yes, sir; it was rather more springy where the water come out and flowed over that ground.

Q. How long since you were last on that land of the Crane Iron Company, or any part of it?

A. I don't think I have been on it for the last nine years.

Q. What flow of water was there in those ditches after Mr. Albertson made them; a rushing current, or a slow current, or no current at all?

A. There was a small current till it got pretty well to the lower end; then there didn't appear to be much move at all.

Q. Do you know the lands of Mrs. Mary Wurts, which are situated on the westerly side of the Pequest river; and, if so, how long have you known them?

A. Yes, sir, I know them; have for forty years, I suppose.

Q. Did you ever live on that property; if so, when and how long?

A. Yes, sir; I lived there with my father about thirty years ago; lived there five years.

Q. Did your father own or rent it?

A. He rented it, a part of it, of the widow Adams—her thirds; a part of it then belonged to Dr. Paul.

Q. How much have you seen of that property since you moved away from it?

A. Well, frequently; I have been along by it, and been on it some.

Q. Now tell us what kind of land that property was; I mean that part that lays between the Pequest and the public road that leads from Danville to Johnsonburgh.

A. Well, when I was a boy, and had to bring the cows out of there, it was wet and boggy; had to build brush roads or bridges to get the cattle from the shore into the solid bogs; the bog grass was nearly as high as my head when I was in there.

Q. Was there, or not, a little strip of dry ground along and on the east side of the public road?

A. Quite a narrow strip; some part of the way the bogs came clear up to the road.

315 Q. Near the road, adjoining the northerly line of the tract, was there a piece of high or dry ground?

A. Yes, sir, there was; there was about eight acres of it.

Q. Then a little east of that strip, but adjoining the northerly line of the property, was there, or not, another piece of dry ground; and, if so, about how many acres was there in that?

A. There was a piece of high, cobbly, rocky ground there; couldn't tell the number of acres; might be fifteen; might be more; couldn't say.

Q. Now, excepting those two pieces of dry ground which you have spoken of, was any part of that tract laying between the Pequest and the public road mowed or cultivated while you lived on that property?

A. There was some few pieces mowed, but it was wet ground; had to carry our bog together to stack it.

Q. What kind of grass was it that you mowed?

A. Well, it was generally a wild grass, but not a right coarse bog, the whole of it wasn't.

Q. Were there any ditches in that tract of land when you lived there?

A. There was one, that came down from north to south a ways, then took down to the east like, and emptied out in the marsh; it was an old ditch at that time; it was a regular running brook of spring water, gathered in the mountains.

Q. How far away from the Pequest did it disappear in the marsh?

A. I should calculate it was a mile or over.

Q. Do you know anything of Dr. Paul ditching in that land; and, if so, about how long since he did that?

A. It is from 20 to 25 years; he was some few years busy ditching there.

Q. Did he ditch any there since you moved away from the property?

A. No, sir.

Q. Tell us where he placed his ditches, in what part of the property.

316 A. He put one along the shore, and he cut one through from the shore down into the swamp; it was near the centre of the *centre of the* property he owned then; he ditched around several pieces beside that.

Q. Did he extend any of his ditches to the Pequest?

A. I am unable to answer; I think he did not.

Q. Did you ever notice how these ditches affected the land; and, if you did, tell us about it?

A. They took off the waters along the shores that naturally flowed over it; made it drier, so that they could drive over it when it wasn't very wet.

Q. After that was any part of the land cultivated; and, if so, how much, and how long?

A. Yes, they farmed some land after that; I remember two different pieces I saw ploughed, seven or eight acres in each piece, for some three or four years.

Q. Why didn't they keep on farming it?

A. Can't tell any other reason except it didn't produce to pay, except one year; they had a big crop of corn there one year.

Q. Could you see any reason why it didn't produce to pay after one year; and, if so, tell us what the reason was?

A. I don't know as I could tell any particular reason, except it wanted a dry season like that that produced the corn.

Q. Do you mean the ground was too wet after that one season?

A. Yes, sir; the ground appears to be too wet in the spring to get the grain started in time.

Q. How long is it since you last noticed this property?

A. Not taken any particular notice of it for the last eight or nine years.

Q. Did your father occupy or use any of the land east of the Pequest which now belongs to Mrs. Wurts?

A. No, sir.

Q. Have you any knowledge of that land lying between the Pequest and the public road leading to Warrenville and the Quaker meeting house?

A. No particular acquaintance with it; I know where it lays; that is about all.

317 And being cross-examined, says:

Q. How many ditches did Mr. Albertson put on Crane Iron Company's property?

A. I think there was two that run from the shore down.

Q. Now can you give us the length of them?

A. I should say from thirty to forty rods, near as I can tell.

Q. Did these ditches extend up to what you call the shore line, on the exterior line, as it is called on the maps?

A. I should think they did very nearly.

Q. Did they extend down to the lower tract that was afterward purchased?

A. Yes, sir.

Q. These ditches drained off the water that came from the high ground above, did they?

A. Yes, sir; they carried off most of it from the shore.

Q. What do you mean by the shore?

A. The solid shore.

Q. Then Mr. Albertson quit mowing this ground because it become so impoverished that it would no longer yield a crop of grass; was not that the fact?

A. I believe it was.

Q. In other words, the land ran out after being mowed for a few years, did it not?

A. Yes, sir; near as I can tell.

Q. And after the land ran out and failed to produce a decent crop of grass, then Mr. Albertson neglected to keep open the ditches, did he not, and let the bogs grow again?

A. Yes, sir.

Q. Will the draining then of that land, in your judgment, make it productive any length of time?

A. That marshy land—my opinion is it will not be very productive.

Q. Do you remember the year in which this big crop of corn grew on Mrs. Wurts' land?

318 A. No, sir; I don't remember the year exactly; it was 22 or 23 years ago, though; I remember the season, though; it was a very dry season; so much so that we could hardly plough our solid ground.

Q. Do you remember what they had in the following year?

A. No, sir; I don't remember what they had on that piece.

Q. Do you remember what the productions of this land were during these years you have spoken of?

A. Near as I can remember there was nothing of any great amount; they ploughed and planted corn; didn't amount to a very great deal.

Q. Where did you live at that time?

A. About a mile or a little over from that place, below, on the same road.

Q. What did you do?

A. Farmed for my father.

Q. Did not the ditches which Dr. Paul made then drain the land sufficiently until they were neglected and filled up again?

A. They appeared to take the water off the top of the ground; still it was wet in wet weather; that bothered them in farming, and kept them from producing.

Q. Did not Dr. Paul cut a ditch clear through to the Pequest?

A. He cut it into the swamp, but don't know that he cut it to the river.

Q. How long did Dr. Paul cultivate it?

A. I couldn't answer it for a certainty; probably six or eight years; he was that long, anyhow, working.

Q. Now, did not this land produce less and less each year that Dr. Paul cultivated it, and did not that arise from the poverty of the soil, or its unadaptedness to produce, rather than from moisture?

A. I don't know whether I can answer that question; I couldn't tell why it was it didn't produce; he appeared to try it until it didn't pay him.

Q. Do you think that land would produce much if it were ever so thoroughly drained?

A. I don't think it would, unless something was done with it to change its nature.

319 Q. This water-course that you spoke of is a natural water course, is it not—that has been made by the water running from the hills above in heavy rains?

A. I suppose it was a natural course of water.

Q. It was not a perpetual stream, was it?

A. I never seen it dry entirely.

Q. How far did that extend below the shores, as you call it?

A. Well, I should think, say in the neighborhood of 75 rods.

Q. Did Dr. Paul's ditches touch that water-course?
A. He dug a ditch and took that water in.
Q. How far did he carry it down?
A. To the swamp.
Q. You spoke of the springs along the shore line; do you mean they were actual springs, or only springy places, where the water oozed up in times of wet weather?
A. Well, a good portion of the way it was only springy places; there were spots where there were living springs.
Q. Were there any springy places or living springs along the shore line of the Crane Iron Co.'s land?
A. Yes, sir; there were springy places almost all along the line; won't say there were any living springs.
Q. In wet weather spring places?
A. Yes, sir.

NELSON BANGHART.

Sworn and subscribed before me, this 2nd day of February, A. D. 1877.

C. H. VALENTINE,
*Supreme Court Commissioner.*

February 10th, 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

320 *Testimony of Coursen H. Albertson from former case.*

COURSEN H. ALBERTSON, a witness produced on the part of the commissioners, being duly sworn, saith:

I am 42 years old—in my 43d; I know the farm on the Great Meadows, now claimed by the Crane Iron Co.
Q. Tell us how long you have known it, and what connection you have had with it, if any.
A. I was born there; my father owned it formerly; I lived there until I was grown up; I frequently seen it since that.
Q. Until what time did the property remain in your father's family?
A. I think it was just about 19 years or so; I can't say positively.
Q. Who became the owner then?
A. I think Warren I. Potter, my brother-in-law; Potter owned it about 8 or 9 years; he sold it to his brother, Israel T. Potter; Israel T. Potter sold it to the Crane Iron Co. as I am informed; I was last on the property in October last; I was frequently on the property while my brother-in-law lived there, and occasionally while Israel Potter had it.
Q. About how near to the public road did the wet land come, or about what width of hard land was there between the road and wet land?
A. It varies from one hundred to three hundred and fifty yards, probably.

Q. Was the commencement of the wet land easy or difficult to discern on the ground?

A. A part of the way the shore is abrupt and a part of it more gradual, but not difficult to tell where it commenced.

Q. Along the line which divided the wet from the dry ground, were there, or not, springy places; and, if so, how much of that line was in that condition?

A. There are a number of springs, and the most of the
321 lands along the line are affected by the springs, I should think.

Q. Please describe to us the kind and quality of land in your father's farm, which was situate southerly of that line which divided the dry from the wet land?

A. It is low, marshy land, covered with bogs and wild grass, with a very little timber and some brush.

Q. Was any part of the land to which my last question related ever plowed within your knowledge?

A. My father cleared off and ditched and plowed about eight acres nearly in front of the dwelling-house and adjoining the line of the next property; Mr. Banghart owned it then.

Q. About how long ago since your father did that?

A. About twenty-six years; I couldn't say positively.

Q. How did the ditches operate, and how was the land affected by them?

A. It was a very dry season when it was ditched, and the lands seemed to be dry enough that season, but the difficulty was that the ditches filled up with water, and soon filled up again with mud, so that we did not seem to get much benefit from them.

Q. Did your father actually plow the land or only bog and harrow it?

A. He plowed only a small part of it along the ditch bank, but harrowed with a sort of knife harrow the greater part of it.

Q. What kind of grass did he sow there, if any?

A. He sowed a mixture of timothy and red top.

Q. How often did he mow it, if at all?

A. The first and second year; the first year was principally ragweed, the next year was some timothy and red top and some weeds, not very much.

Q. How about the next year?

A. I don't think we mowed it, or only a small part of it; I think along the ditch bank for a little part we mowed it.

Q. After your father had harrowed it, about how long was it before the bogs reappeared in the land?

322 A. Through the centre part and greater part of it, I think it was about five or six years.

Q. After that was there anything done in the way of cultivating that land, or mowing it, or draining it?

A. No, sir; unless it was a very small part of it adjoining a meadow that we formerly mowed, that is mostly outside of the division line spoken of.

Q. You spoke about the ditches getting filled with water the sec-

ond year, do you mean by that that the quantity of water gathered in the ditches the second year was greater than the first, or that it stood in the ditches without flowing off?

(Objected to, as leading.)

A. I think the quantity of water was greater because it was a more rainy season, and there was no outlet to the ditches to let the water escape.

Q. How does the character of that land differ, if at all, from the other low wet lands on or about the Pequest, in that locality?

A. It is wetter along the shore than it is out a distance from the shore owing to springs and small streams of water flowing in from the high lands.

Q. How does it differ from the lands lying adjoining it on the the south, and east, and west, if at all?

A. But very little, if any.

And being cross-examined, says:

I was on the land in October last.

Q. Over how much of it did you go in October last?

A. Only a small part of it adjoining the shore.

Q. How was it, wet or dry?

A. I think it was mostly dry.

Q. Was not the lot 35 almost entirely dry, so that it could without difficulty have been plowed?

A. I wasn't out any great distance from the shore; I think the lower or western part of it was dry enough to have been plowed.

323 Q. Are there bogs to any great extent on lot 35?

A. I don't think there are a great many bogs, there are more bogs on the eastern part than on the western part.

Q. Now, as far as your observation went, when last on that property, was not the thirty-five acre lot capable of tillage?

A. I think the greater part of it was.

Q. How wide was this wet space that you speak of immediately along the shore?

A. It was more or less wet clear out, but wetter for 200 or 300 yards than it was beyond there.

Q. Do you mean that this belt, made by these springs, is 200 or 300 yards wide?

A. Made by the springs and streams of water running in, is perhaps wider than that.

Q. How far along this land do these springs extend?

A. Do you mean along the coast line?

A. (By Counsel:) Yes.

A. (By Witness:) There are a number of springs along the coast line extending the whole distance along the line, but the springs are some distance apart, some places closer, some more distant.

Q. How far down did those ditches which your father made extend, as compared with the length of lot 35?

A. About 250 yards.

Q. Do you mean 250 yards was the whole length of the ditch?

A. I do.

Q. Where did it commence?

A. Commenced near the coast line, the line between wet and dry land, and extended down 250 yards.

Q. Now, how many ditches did your father make?

A. He made two ditches extending nearly north and south, one on the easterly side of the land, the other on the westerly side of the land on the line of Banghart; the easterly ditch was about 150 yards from the westerly.

Q. Can you give the width and depth of those ditches?

324 A. They were five or six feet wide, and from three to four feet deep.

Q. The first year, I understand you, they carried off the water?

A. The first year was a very dry year, and but very little water accumulated in the ditches.

Q. Was the next year very wet?

A. I don't remember that it was very wet, but wetter than the first year.

Q. Had the ditches become filled up during the first year?

A. But very little.

Q. Cattle running in the ground all the time?

A. Not on every part of it; on the outside were cattle.

Q. Now, during the first year these ditches were put there, state the condition of the ground—this dry year, I mean.

A. The dry year was the year the ditches were made, not the year afterwards.

Q. Well, describe the land the dry year then.

A. The land was very dry during the latter part of the summer, and the early part of the fall; the soil became loose and light.

Q. Did it produce a crop the dry summer, or was in with a crop the dry summer at all?

A. We seeded it down the dry summer; it did not produce a crop that summer at all; we seeded it down in August or September with a mixture of timothy and red top.

Q. What kind of a crop did it produce next year?

A. It was mostly rag-weed, with some hay and grass along the ditch banks.

Q. Were the ditches filed up any this year?

A. Only a very little; partly filled with water.

Q. Would it be necessary to keep the ditches open always to keep the land dry?

A. The ditches were inclined to fill up, and didn't seem to do much good when open.

(Question repeated.)

325 A. It would be necessary, and then they wouldn't keep it dry.

And being re-examined, says:

Q. How was last season in respect to drought?

A. It was a very dry season.

Q. Did you ever see one as dry; if so, when?

A. I don't think I ever did.

Q. You said that you thought that in October last, lot 35 was capable of cultivation, did you mean by that anything more than that the greater part of it could have been plowed at that time?

(Objected to, as leading and as asking his opinion and thoughts.)

A. I meant owing to the dry season, the greater part of it was dry enough to admit of plowing.

Q. Did you mean to say that if it had been plowed it would have produced enough to pay for its cultivation?

(Objected to, for same reasons.)

A. I [did] not say so, and did not mean so.

And being recross-examined, says:

Q. Have you never seen this land in 26 years in as dry a condition as it was last fall—I mean this 35-acre lot?

A. I don't think I have.

Q. How often have you been on this thirty-five acre lot to examine whether it was dry or wet since your father moved off it?

A. I don't think I ever went on it to examine it in that respect, but was on it frequently during the time my brother-in-law owned it, and occasionally since.

Q. Did your brother-in-law never cultivate any of it?

A. No, sir; I never knew him to.

326 Q. You was asked if it had been plowed last fall, whether you meant to say that it would have produced enough to pay for plowing; suppose the land to be thoroughly drained, would it then produce enough to pay for tilling it?

A. I think it would if it could be kept drained.

C. H. ALBERTSON.

Sworn and subscribed before me, this 3rd day of February, A. D. 1877.

C. H. VALENTINE,
*Supreme Court Commissioner.*

Feb. 10th, 1880.

HENRY S. HARRIS,
*Supreme Court Commissioner.*

327 EXHIBIT I.

(Copy.)

To the board of managers of the geological survey of the State of Jersey:

We, the undersigned, owners of separate lots of lands situated in the Great Meadows, on the Pequest river, above Vienna, in the county of Warren, and State of New Jersey, hereby make application to your board to examine said Great Meadows and to decide upon and adopt a system of drainage for draining the same, under the act

of the Legislature of the State of New Jersey, entitled "An act to provide for the drainage of lands, approved March 8, 1871."

N. P. Cummins,
Simon A. Cummins,
Lewis H. Martenis,
Aaron Van Buskirk,
Jacob Ham,
Garrett L. Ham,
Henry Vreeland,
M. Shryber,
Lewis Merrill,
John I. Green,
John S. Little,
Jacob Cummins,
Polhemus Cummins,
Richard M. Smith,
Patrick Welch,
Addam Stiff,
R. L. Garasone.

328 EXHIBIT II.

*Drainage of the Great Meadows.*

Notice is hereby given that until the 15th day of July next the commissioners appointed by the supreme court of the State of New Jersey under the "Act for the drainage of lands," approved March 8th, 1871, and the supplements thereto, will receive proposals for improving and deepening the channel of the Pequest river, so as to effect the drainage of the Great Meadows and lands lying along the same, and certain tributaries thereto.

All proposals to be addressed to Abm. R. Day, engineer, Hackettstown, N. J., who will also furnish definite information as to conditions and specifications of work.

JAMES BOYD,
AMOS HOAGLAND,
SAMUEL S. CLARKE,
*Committee.*

Vienna, N. J., June 15th, 1874.

EXHIBIT III.

*Agreement between the Commissioners and Stevens and Fagin, 12th December*, 1877.

And the said party of the second part do hereby covenant and agree to pay to the said parties of the first part, in manner and form following, and at times and on conditions specified in this agreement, for the before-mentioned work, viz:

For all earth excavated, per cubic yard, twenty-five (25) cents.

For all rock excavated, per cubic yard, three (3) dollars.

That the manner and time of payment for work done, before mentioned in this agreement, shall be so qualified and restricted

that it shall be determined by the amount of money in the hands of said commissioners, and the said parties of the first part
329 hereby covenant and agree with said commissioners that if, at any time, when the current or monthly or final estimates before mentioned are due and payable, and sufficient monies to pay the same shall not be in the hands of the commissioners aforesaid, the same shall not be payable until sufficient monies (over and above payment of current interest on loans and minor expenses) shall come into the hands of the commissioners, whereupon such suspended or overdue estimates shall be first paid; the said parties of the first part hereby waiving all right of legal action against such commissioners for the collection or payment of such overdue estimates or part thereof till said sufficient monies be in the commissioners' hands.

EXHIBIT IV.

Agreement between same parties, dated October 18, 1876, containing same provision as in Exhibit No. 3, above.

330 *Appendix.*

New Jersey Supreme Court. November Term, 1872.

In the Matter of the Application of the Board of Managers of the Geological Survey for the Appointment of Commissioners to superintend the Drainage of the "Great Meadows," on the Pequest River, in the County of Warren and Sussex.

It appearing to the court by the within report of the board of managers of the geological survey, and the plan and map therein referred to, filed in the office of the clerk of court prior to the 13th day of September, 1872, that application hath been made to said board by more than five owners of separate lots of land, included within a certain tract of land situate in this State, in the counties of Warren and Sussex, known as "The Great Meadows," which is subject to overflow from freshets, and is low, marshy, boggy, and in a wet condition. Said tract of land is situate on both sides of the Pequest river, and on each side of one of its branches called "Trout brook," in the township of Independence and Hope, in the county of Warren, and in the township of Green, in Sussex county, extending by Pequest river from Vienna and Danville at the westerly end to a point in Green township, in Sussex county, about
331 one-eighth of a mile from the line between the counties of Warren and Sussex, and by Trout brook from its mouth on Pequest river, and extending to and beyond the line between Sussex and Warren counties, and embracing an area of drowned and wet lands of five thousand seven hundred and fifty-six acres.

The boundary of said tract is plainly marked upon the surface at the meeting of the flat and boggy meadows or swamp with the upland, and may be traced: Beginning at the edge of the meadow, in front of the Presbyterian church at Danville, and thence bearing northwesterly in an irregular line for a mile and a half; thence

northeasterly along the west side of Bear Creek meadow for one mile; thence along the margin of said meadow and across the creek and down along the easterly margin of the meadow to and along the extremely crooked margin of the same to the road across long bridge, which is distant five miles and one-quarter of a mile in a straight line from the beginning; thence northeasterly along the northwest margin of the meadow a distance of two miles and three-quarters of a mile to a point one-eighth of a mile beyond the division line between Warren and Sussex counties, where the meadows end and the boundary-line meets the Pequest river; thence across the said river and down the southeasterly margin of the meadow in a southwesterly direction two miles, and to the margin of the meadow on Trout brook; thence northeasterly along the northwesterly margin to the meadow on Trout brook one and a half miles to where the margin of the meadow meets the brook; thence across said brook and down the southeasterly margin of the Great Meadows in a crooked line, which bears generally southwest four miles and one-eighth of a mile to the road crossing to Young's Island; thence southeasterly three-eighths of a mile along the meadow margin; thence southwesterly along the edge of the meadows a distance of three miles and seven-eighths of a mile to the steam mill on the Pequest river; and thence continuing across the Pequest in the same direction and along the meadows five eighths of a
332 mile to the place of beginning. Included within the foregoing boundaries are three islands or knolls of hard ground, viz., Trimmer's Island, Post's Island, and Young's Island, the area of which are not included in the contents of the tract hereinbefore stated.

And it further appearing by the said report, maps, and plan that the said board has examined said tract of land and deem and have decided it to be for the interest of the public and of the land owners to be affected thereby to have the said lands drained, and, with the assistance of the State geologist, have made surveys of said tract and have decided upon and adopted a system of drainage for draining the same, and have caused a map of the same, together with the plan of drainage by them adopted to be made, and have filed the same in with their report and application now being made to this court by and on behalf of said board to appoint three commissioners, not interested in the said lands to be drained, to superintend and carry out the drainage of the said tract of land according to the said system or plan, pursuant to the act entitled "An act to provide for the drainage of lands," approved March 8th, 1871; and it appearing to the satisfaction of the court, by due proof, that reasonable notice of the said application has been put up, published, and served, that is to say, that said notice was published in two newspapers of the said county of Warren, and also in two newspapers in the said county of Sussex, for at least six weeks previous to the first day of this term of this court, at least once in each week, and that printed copies of the same notice were set in five of the most public places in each of the townships in which any of the said tracts of land is situate and nearest thereto, that is to say, in

the township of Independence and Hope, in the county of Warren, and in township of Green, in the county of Sussex, at least six weeks before the first day of this term of this court, and also that a printed copy of said notice was served at least four weeks before the first day of this term, personally, upon John Green and upon Ephraim Simonson. they being persons whose property may be taken
333 or specially damaged by the execution of said plan of drainage;

And it further appearing that said notice so as aforesaid posted, published, and served is sufficiently full and explicit and sufficient in form and substance, and no remonstrance or objection to the appointment of such commissioners being made, and the court being of opinion that the said notice, and the posting, publication, and service thereof, were and are reasonable and sufficient, and that the said appointment should be made;

It is ordered that Amos Hoagland, James Boyd, and Samuel S. Clark, all of the said county of Warren, persons not interested in the said lands to be drained, be, and they are, appointed commissioners to superintend and carry out the drainage of the said tract of land hereinbefore described, and whose duty it shall be to carry out and execute the said system of drainage so as aforesaid adopted and reported by the said board of managers, pursuant to the act entitled "An act to provide for the drainage of lands," approved March 8th, 1871.

Entered Nov. 15th, 1872.

On motion of—

JACOB VANATTA,
*Att'y of said Board.*

A true copy.

BENJ. F. LEE, *Clerk.*

NEW JERSEY, } *ss.:*
*Warren County,* }

Amos Hoagland, James Boyd, and Samuel S. Clark, the commissioners named in the foregoing appointment, personally appeared before me, Mercer Beasley,, chief justice of the supreme court of New Jersey, and each of them being severally sworn according to law, each one of them, on his oath, did depose and swear that he
334 will faithfully perform the duties of his said office of commissioner.

Sworn and subscribed the 8th day of January, A. D. 1873, before me.

M. BEASLEY,
*Chief Justice.*

AMOS HOAGLAND.
JAMES BOYD.
SAMUEL S. CLARK.

A true copy.

BENJ. F. LEE, *Clerk.*

335 To the honorable the supreme court of the State of New Jersey:

The report of Amos Hoagland, James Boyd, and William L. Johnson, commissioners appointed by the said supreme court, on the application of the board of managers of the geological survey of the State of New Jersey, to superintend the drainage according to a system of drainage reported by said board of a certain tract of land, situate in this State, in the counties of Warren and Sussex, known as "The Great Meadows," which is subject to overflow from freshets, and is low, marshy, boggy, and in a wet condition, and is more fully and particularly described in the said order of appointment, the said William L. Johnson having been appointed to fill a vacancy caused by the resignation of Samuel S. Clark, who was originally appointed one of said commissioners, respectfully shows:

That on the eighth day of January, eighteen hundred and seventy-three, and before entering upon the duties of our appointment, before the Honorable Mercer Beasley, chief justice of said supreme court, we, Amos Hoagland and James Boyd, did take our oaths that each of us would faithfully perform the duties of this said office of commissioners, and that on the — day of ——, A. D. eighteen hundred and seventy-five, before the Honorable David A. Depue, a justice of the supreme court of New Jersey, the said William L. Johnson, before entering upon the duties of his said office, did take a like oath, which oaths we did cause to be filed in the clerk's office of the said supreme court, as by reference to said orders of appointment and oaths, leave of reference to which is hereby prayed, will more fully and at large appear.

That after being sworn as aforesaid we caused surveys and levels to be made and maps prepared of the said Pequest river, from a point about one mile and three-eighths of a mile below the bridge across said river at Vienna, to a point about two miles above
336 said bridge, being what is called the "Outlet." We also caused a survey of a base line and map to be made of the shore of Pequest river, between the upper end of the surveys and levels first mentioned, and the mouth of Trout brook, a stream mentioned in our appointment, a distance of six and a half miles, and levels to be taken of the same. We have also made a survey and map of the exterior lines around the lands, described in our appointment "as subject to overflow from freshets, and is low, marshy, boggy, and in a wet condition, and thus forming a general outline description or delineation of the lands and territory, which, in our judgment, ought to contribute to the expense of said plan of drawings."

That we have by public letting and proposals and specifications issued, and in every way we could secure the performance thereof to the best advantage, contracted the work required in the "plan" of drainage set forth in our appointment, and accomplished the execution of such work as shown and set forth in the "plan" and "profile" filed in the clerk's office of the supreme court, before our appointment, and by the execution of the aforesaid work we have lowered the reef "at Vienna bridge three (3) feet, the reef at the bridge next above four feet and three-tenths of a foot, and the reef at the steam-

mill bridge five feet and six inches. We have also lowered, as in the 'plan' required, the bed of the Pequest river between the reefs to the same grades, and brought said river also to the full width of thirty feet through the 'Outlet.' We have also conformed to the 'plan' wherein it says: After this is done the streams through the Great Meadows must be cleared of trees, stumps, bogs, brush and other temporary obstructions which now retard the current of the water in the river, and to make the work complete it will be necessary to lower the sand and mud bars and banks in the channel so as to give it capacity enough to carry the streams within its banks. This to be done as the effects of the first improvement shows it to be necessary."

337 And for the better comprehension of the foregoing "plan" of drainage, for the superintendance and carrying out of which we were appointed, we would restate the same as understood and executed by us, and its results in a more numerical and recapitulate form as follows: The main channel of the Pequest river is cleared and opened complete for a distance of nine and three-quarter ($9\frac{3}{4}$) miles, being widened to thirty (30) feet five and and a half ($5\frac{1}{2}$) miles to twenty-seven (27) feet one (1) mile and to twenty-four (24) feet three and a quarter ($3\frac{1}{4}$) miles.

The bottom of the river has been graded to a uniform surface, with a fall of one (1) foot to the mile for four (4) miles, to two (2) feet per mile for a distance of one (1) mile, three (3) feet per mile for two (2) miles, and one and a half ($1\frac{1}{2}$) feet per mile for two and three-quarter ($2\frac{3}{4}$) miles.

In the river the excavation has averaged about three and a half ($3\frac{1}{2}$) feet in depth for the whole length of channel, being at or near grade five (5) per cent. of the whole distance, and ninety-five (95) per cent. in depth varying down to eight (8) feet.

The work has been almost wholly among solid material, some boulder rock, and hard-pan, but no ledge rock, although the newly excavated channel appears now in several places to be close upon the bed rock of the valley. Through the larger portion of the Great Meadows proper, a distance six and a half ($6\frac{1}{2}$) miles, the work was found to be through a sandy clay, very close and dense, and the newly formed bottom of the stream is hard and cohesive.

The outlet proper, a distance of three and an eighth ($3\frac{1}{8}$) miles was first open to the spring freshets of 1877, and then and since the action of the stream, both at high and low water, dissipates all apprehension as to the enduring character of the work.

Also in the five (5) main tributaries to the Pequest river through the Great Meadows, required by the "plan" to be cleared and opened, we have executed that work for an aggregate distance of five and a quarter ($5\frac{1}{4}$) miles, in considerable portion of which

338 the excavations averaged three and a half ($3\frac{1}{2}$) feet in depth.

The total amount of excavated measured material in the whole nine and three-quarter ($9\frac{3}{4}$) miles in channel of Pequest river of rock and earth is one hundred and eighty-two thousand (182,000) cubic yards, and a large amount of logs, stumps, and other drift not reducible to numerical contents.

The measurements of excavation on the tributaries is nine thousand two hundred cubic yards of earthy material, together with a great quantity of obstructions removed, not thus definable. Almost the whole work has been executed, submerged or in contact with water, and thus unavoidably with increased cost over ordinary excavations. We have also enlarged and partially rebuilt three of the public bridges over Pequest river, and removed several dams and obstructions not classified as excavation, but necessary to carry out the "plan" adopted by the managers of the geological survey, so that at this time and since the completion of the work the channel of the Pequest river and the improved tributaries are of "sufficient capacity to carry the stream within its banks," as demonstrated by the great flood of December, 1878, said not to have been exceeded since 1841.

The total expense incurred is ninety-five thousand four hundred and eighty-five 17-100 (95,485.17) dollars, classified as follows:

| | |
|---|---|
| For commissioners' services, at $5 per day, for 6½ years | $3,757 80 |
| " managers' expenses, preparing "plan" | 300 00 |
| " engineering and surveying during "plan" | 2,384 40 |
| " assistant surveyors' services | 980 48 |
| " laborers on surveys | 451 01 |
| " right of way | 539 00 |
| " civil and legal expenses | 2,710 36 |
| " interest paid on bonds and temporary loans | 13,171 95 |
| " printing and advertising | 102 68 |
| " excavation and work, clearing and opening | 71,140 49 |
| " incidentals | 42 90 |
| | $95,531 07 |

339 We have bonds issued to the amount of seventy-five thousand (75,000) dollars, maturing in 1884, but redeemable at the option of the commissioners at any previous time on notice, and the balance of the moneys expended has been raised on temporary loans. During the progress of preparation, issue, and collection of the assessment provided for by law, and now commenced, which we have estimated to consume one and three-quarter years, we have computed on reliable data and experience thus far that the additional expenses of the works will be as follows:

| | |
|---|---|
| For commissioners' services, at $5 per day | $600 00 |
| " engineering and tentorial surveys | 350 00 |
| " civil and legal expenses | 2,000 00 |
| " laborers assisting on land surveys | 100 00 |
| " interest on loan 1¾ years | 9,315 00 |
| " printing and advertising | 20 00 |
| | $12,385 00 |

Being twelve thousand three hundred and eighty-five dollars, which, added to the amount previously expended, as above set forth, makes the sum of one hundred and seven thousand nine hundred

and sixteen 7-100 (107,916.07) dollars, as the entire cost of the work when completed and paid for.

And your commissioners aforesaid now hereby submit this, their report, to the supreme court, as required by the act under which they were appointed, "together with a general outline description or delineation of the lands and territory, which, in their judgment, ought to contribute to the said expense," as follows:

A true copy or abstract.

BENJAMIN F. LEE, *Clerk.*

340 New Jersey Supreme Court. June Term, 1879.

In the Matter of the Drainage of the Great Meadows in the Counties of Warren and Sussex.

Amos Hoagland, James Boyd, and William L. Johnson, commissioners appointed to superintend and carry out the system of drainage of the Great Meadows in Sussex and Warren counties, having completed said work, and having in accordance with the requirements of the act entitled "An act to provide for the drainage of lands" approved March 8, 1871, on the seventeenth day of May, A. D. 1879, filed in the office of the clerk of this court their report in writing, showing the expense of said work and of all materials used therefor, including the expense of the board of managers, and the compensation of said commissioners, to be the sum of one hundred and seven thousand nine hundred and sixteen dollars and seven cents.

Which said report also contains a general outline description of the lands and territory, which, in the judgment of said commissioners, ought to contribute to said expense.

And it now appearing to the court by the affidauits of A. C. Higgins, publisher of the Hackettstown Herald, and Ziba Osmun,
341 publisher of the Hackettstown Gazette, two newspapers circulating in the vicinity of said lands, that notice of the filing of said report has been published in both of said papers for the space of four weeks, at least once each week immediately prior to this time, and no objections to said report having been filed—

It is on this twenty third day of June, A. D. 1879, ordered that the said commissioners proceed to distribute and assess the amount mentioned in their said report, that is to say, the sum of one hundred and seven, thousand nine hundred and sixteen dollars and seven cents upon the lands mentioned in their said report in proportion as nearly as they can judge to the benefit derived from said drainage by the several parcels of land to be assessed.

Entered June 23d, 1879, on motion of Theodore Little, att'y for said commissioners.

A true copy. BENJAMIN F. LEE, *Clerk.*

342 New Jersey Supreme Court. June Term, 1879.

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And it now appearing to the cout by the affidavits of A. C. Higgins, publisher of the Hackettstown Herald, and Ziba Osmun,
343 publisher of the Hackettstown Gazett, two newspapers circulating in the vicinity of said lands, that notice of the filing of said report has been published in both of said papers for the space of four weeks at least, and each week immediately prior to this time, and no objections to said report having been filed.

It is, on this twenty-third day of June, A. D. 1879, ordered that the said commissioners proceed to distribute and assess the amount mentioned in their said report, that is to say, the sum of one hundred and seven thousand nine hundred and sixteen dollars and seven cents, upon the lands mentioned in their said report in proportions as nearly as they can judge to the benefit derived from said drainage by the several parcels of land to be assessed.

Entered June 23d, 1879. On motion of Theo. Little, att'y for said commissioners.

The undersigned commissioners named in the order made by the supreme court of this State, bearing date on the twenty-third day of June, A. D. 1879, a copy of which is hereto annexed, do hereby certify that, in pursuance of the directions contained in said order, we have distributed and assessed, and do hereby distribute and assess, the amount of the expense of the work done by us, as heretofore reported to said court, and as mentioned in said order, that is to say, the sum of one hundred and seven thousand nine hundred and sixteen dollars and seven cents, upon the lands embraced within the territory heretofore reported by us as that which, in our judgment, ought to contribute to such expense in proportion, as nearly as we can judge, to the benefit derived from said drainage, by the several parcels of land to be assessed; that is to say, the particulars of such distribution and assessment are contained in and shown by the statement following, in which we have designated the several tracts

by the name of the owner or occupiers, so far as we could learn the same, and also by number corresponding with our report
344 heretofore made to and confirmed by the supreme court,

* * (Here follow the assessments.) * *

and we make this report as required by law and the order of the supreme court of New Jersey.

And we do further certify that after completing the foregoing assessment we deposited it with Uzal H. Howell, at Danville, in said county of Warren, that being a convenient place, in our judgment, for the inspection of the same by the parties interested, and we appointed also the second day of September, A. D. 1879, at ten o'clock in the forenoon, at the hotel in Danville aforesaid, kept by Lewis H. Martenis, as the time and place when and where we would meet to hear objections to our said assessment. That we caused notice of the completion of our assessment and the place where the same was deposited, and also of the time and place appointed to hear objections thereto, to be published once in each week for at least six weeks prior to said time in The Hackettstown Herald and The Hackettstown Gazette, two newspapers published at Hackettstown, in the county of Warren, which papers circulate in the counties of Warren and Sussex, in the vicinity of said lands.

And we further certify that we attended at the time and place appointed to hear objections to our said assessment, and that we heard all the parties who desired to be heard, and carefully considered their objections, and decided that no sufficient reason was presented to require or justify any change in said assessment as originally made by us.

Witness our hands, this sixth day of September, A. D. 1879.

[L. S.] AMOS HOAGLAND,
JAMES BOYD,
WILLIAM L. JOHNSON,
*Commissioners.*

A true copy.
BENJ. F. LEE, *Clerk.*

345 *Writ of Error. Filed March* 30, 1881.

N. J. Court of Errors and Appeals.

CHARLES STUART WURTS and ROB'T LENOX KENNEDY,
Plaintiffs in Error,
*vs.*
AMOS HOAGLAND, JAMES BOYD, and W. JOHNSON, Com. of Drainage.

STATE OF NEW JERSEY, *ss:*

The State of New Jersey to the justices of the supreme court of the State of New Jersey, Greeting:

Because in the record and proceedings and also in the giving of judgment in a plaint which was in our said court before the justices thereof on certain exceptions made by Charles Stuart Wurts,

a resident of the State of Pennsylvania, Robert Lenox Kennedy, a resident of the State of New York, devisees of Mary V. Wurts, deceased, to the last assessment made on and against certain lands late of the said Mary V. Wurts, and named and set forth in the said assessment, which assessment was made by Amos Hoagland, James Boyd, and William L. Johnson, commissioners appointed by our supreme court, on the application of the board of managers of the geological survey of the State of New Jersey, to super-
346 intend and carry out a system of drainage adopted by the said board of managers of the geological survey, for the drainage of a certain tract of land known as the "Great Meadows," which is subject to overflow from freshets, and is low, marshy, boggy, and in a wet condition, and which lands, late of the said Mary V. Wurts, are situated in the township of Independence, in the county of Warren, and State of New Jersey, and which assessment was filed in the office of the clerk of the supreme court of the State of New Jersey, on the 8th day of September, A. D. 1879, and in the clerk's office of Warren county, on the 10th day of September, A. D. 1879, and which assessment was made on said lands for a portion of the cost and expense of carrying out the said system of drainage, as is said manifest error hath intervened to the great damage of the said Charles Stuart Wurts and Robert Lenox Kennedy, as by their complaint we are informed.

We being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching the same, to our court of errors and appeals, on the first day of March, A. D. 1881, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to the constitution and laws of the State of New Jersey, ought to be done.

Witness Theodore Runyon, chancellor and president of our court of errors and appeals, the ninth day of February, A. D. 1881.

HENRY C. KELSEY, *Clerk.*

J. G. SHIPMAN & SON, *Attorneys.*

The answer of the justices of the supreme court of New Jersey within named: The record and proceedings whereof mention
347 is within made, with all things touching and concerning the same, we do certify to the court of errors and appeals, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY,
*Chief Justice.*

*Copy of Judgment.*

The exceptions filed to the assessments made by Amos Hoagland, James Boyd, and William L. Johnson, commissioners, having been argued by counsel and duly considered by the court—

It is ordered that the assessment upon the lands of Ephraim

Simonton upon $24\frac{60}{100}$ acres, now owned by Aaron Van Buskirk, but marked upon the commissioners' map as belonging to S. T. Scranton; upon $34\frac{35}{100}$ acres marked on said map as belonging to John Lewis, but now owned by Phebe A. Wilson; and $40\frac{96}{100}$ acres upon lands of James W. Tims, be reversed, for the reason that said lands lie outside of the drainage district, and that said assessment be referred back to said commissioners to be corrected, in pursuance of the law in such case provided; and that for such purpose the commissioners have leave to take said assessment from the files of the court.

It is further ordered that all exceptions filed by said Ephraim Simonton, Aaron Van Buskirk, Phebe A. Wilson, and James W. Tims, except such as claim their lands are not within the drainage district, be overruled, and that the exceptions filed by the other exceptants be overruled, with costs to be paid by the exceptants.

By the court: E. W. SCUDDER, *Justice.*

Entered December 1, 1880.

I, Benj. F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of an order made in the above-stated cause by said court, and entered in the minutes thereof.

348 In testimony whereof, I have hereto set my hand and the seal of said court, at Trenton, this sixteenth day of February, A. D. eighteen hundred and eighty-one.

[L. S.] BENJ. F. LEE, *Clerk.*

*Assignment of Errors. Filed April 25*, 1881.

Afterwards, that is to say, on the —— day of April, A. D. 1881, before the court of errors and appeals, in the last resort in all causes, came the said Robert Lenox Kennedy, a citizen of the State of New York, and Charles Stuart Wurts, a citizen of the State of Pennsylvania, by J. G. Shipman & Son, their attorneys, and say that in the records and proceedings aforesaid, and in the giving of the judgment aforesaid, there is manifest error in this, to wit, that the said court gave jugment in the exceptions filed by the said plaintiffs in error in favor of the said Amos Hoagland, James Boyd, and William L. Johnson, commissioners of the said drainage, when by the Constitution and laws of the land the said court should have given judgment on the said exceptions in favor of the plaintiffs in error.

There is also error in this, that the said court decided that the law under which said proceedings were taken was not in violation of the Constitution of the United States and of the State of New Jersey, whereas, in truth and in fact, the said law under which the said proceedings were taken was in violation of the Constitution of the United States and of the State of New Jersey, and is void.

There is also error in this, that the said court decided that the drainage of the said meadows was of use and benefit to the lands assessed against the said Mary V. Wurts, deceased, whereas, in truth

and in fact, the drainage of the said meadows is of no use or benefit to the said lands assessed against the said Mary V. Wurts, belonging to plaintiffs in error.

349 There is also error in this, that the said court decided that the lands so assessed are not far above and beyond the influence of the said drainage—had not long been cultivated, whereas, in truth and in fact, a very large portion of the lands so assessed is above and beyond the influence of the said drainage, and had long been cultivated.

There is also error in this, that the said court decided that the said assessment was not fraudulent and void and was not fraudulently made by said commissioners, because the commissioners assessed in the name of Mary V. Wurts and others a sum of money sufficient to pay them, sum of six thousand dollars, or thereabouts, in lump, for their services and expenses as commissioners, when no such sum of money was either justly or legally due them under the said act for services and expenses as commissioners, nor had been justly expended by them, and which they well knew at the time they made said assessment, and when objections were made to the sum so charged the commissioners refused to correct it in any way; whereas, in truth and in fact, the said assessment is fraudulent and void, and was fraudulently made by the said commissioners, because the said commissioners have assessed upon the lands of the plaintiffs in error, in the name of Mary V. Wurts and others, a sum of money sufficient to pay them the sum of six thousand dollars, or thereabouts, in lump, for their services and expenses as commissioners, when no such sum of money was either justly or legally due them, under the said act, for services and expenses as commissioners, nor had been justly expended by them, and which they knew when they made the said assessment, and when objections were made to the said sum, the said commissioners refused to correct it.

There is also error in this, that the said court decided that the said commissioners did not fraudulently and knowingly refuse to borrow the necessary sum for doing the said work, and that they did not contract the work of said drainage to persons at a rate far beyond the actual value of said work, to be paid with the bonds of the said commissioners, and then passed the said bonds to said contractors, well knowing that the contractors intended to and did pass off the said bonds at rates varying from sixty to eighty and ninety

350 cents on the dollar, whereas, in truth and fact, the said commissioners did fraudulently and knowingly refuse to borrow the necessary sum for doing the said work, but did contract the work of said drainage to persons at a rate far beyond the actual value of the said work, to be paid with bonds of the said commissioners, and then passed the said bonds to the said contractors, well knowing that the said contractors intended and did pass off the said bonds at rates varying from sixty to eighty and ninety cents on the dollar.

There is also error in that the said court decided that the said drainage is now and will be of use and benefit to the lands assessed to the said Mary V. Wurts, whereas, in truth and in fact, the said drainage is not now and never will be of any use or benefit to the lands

assessed to the said Mary V. Wurts belonging to these plaintiffs in error.

There is also error in this, that the court decided that the system of drainage has been completed, whereas, in truth and in fact, the system of drainage has never been completed.

There is also error in this, that the law under which proceedings were taken is in violation of the Constitution of the United States, and of this State, and is void because the said proceeding is of no public benefit, but is a mere private enterprise, and is included in the judgment of five private land-owners, whose land may be of no real value, and takes the property of one private individual against his will and consent to pay for benefiting the lands of another private individual. That the right of eminent domain, which exists in the State, exists only when the State can take the land of any individual, against his will, for public use, and then only upon just compensation first paid or tendered. But the law in question undertakes to take the property of an individual without any compensation, and actually compels him to pay large sums of money for benfiting other persons' lands; but the said court decided the opposite of all this, and held the law to be constitutional.

There is also error that the said law, authorizing the said drainage, is contrary to the principles of natural justice, and is void, inasmuch as it undertakes to take one man's property to pay
351 for benefits done to another man's property; yet the said court decided the opposite of all this, and upheld and sustained the said law.

There is also error in this, that the said commissioners, in making their assessment, committed errors in law, and also erred in the principles of the assessment so made by them; yet the said supreme court decided the opposite of this, and held that the said commissioners did not commit any error in law in making said assessment, and that they did not err in the principles of the assessment so made by them.

There is also error in this, that the pretended benefits assessed by the said commissioners amount to over one hundred and seven thousand dollars, when all the lands embraced within the said assessments and within the said survey are not worth anything like that sum of money, and will not sell for that sum of money in the market, and the amount assessed upon the lands of the plaintiffs in error exceeds the value of the lands so assessed; yet the supreme court decided the opposite of this, and held that there was no error in this respect.

There is also error in this, that the saidcourt decided that the act to provide for the drainage of lands, approved March 8, 1871, (Revision, 662), is constitutional, and the assessments made thereunder are to be apportioned, but not limited by special benefits as under the law of eminent domain, whereas, in truth and in fact, the said law is unconstitutional, and the assessments made thereunder are null and void, and if assessed at all are to be apportioned and limited to the amount of the special benefits received.

There is also error in this, that the court decided that the objec-

tions to the amount of cost and assessments for improvements reported by the commissioners, must be supported by proof of facts, measurements, &c., and cannot be based on mere opinions and imperfect estimates made prior to the contract, and that it should appear by direct and certain proof that their determination was so clearly wrong as to manifest some bias, partiality, or fraud, and that it did not so appear in this case, whereas, in truth and in fact, the objections to the amount of cost and assessments for improvements reported by the commissioners were supported by proof of facts, measurements, &c., and were not based on mere opinions and
352 imperfect estimates made prior to the contract, and that it did appear by direct and certain proofs that the determination was so cleary wrong as to manifest some bias, partiality, or fraud, and the said court should have sustained the said objections.

J. G. SHIPMAN & SON,
*Attorneys of Robert Lenox Kennedy and Charles Stuart Wurts, Plaintiffs in Error.*

*Joinder in Error. Filed May 2d*, 1881.

And hereupon afterwards, to wit, on the second day of May, A. D. eighteen hundred and eighty-one, the said Amos Hoagland, James Boyd, and William L. Johnson, commissioners, &c., by Theodore Little, their attorney, come into court and say, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and they pray here that the court here may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid given may in all things be affirmed so far as relates to the errors assigned by said plaintiffs in error.

THEO. LITTLE,
*Attorney and of Counsel with Defendants.*

353 New Jersey Supreme Court. November Term, 1880.

In the Matter of Drainage of the Great Meadows on Pequest River

1. The act to provide for the drainage of lands, approved March 8, 1871, (Revision, 662), is constitutional, and the assessment made thereunder are to be apportioned, but not limited by special benefits, as under the law of eminent domain.

2. The objection to the amount of cost and assessment for improvements reported by the commissioners must be supported by proof of facts, measurements, &c., and cannot be based on mere opinions and imperfect estimates made prior to the contract. It should appear by direct and certain proof that their determination is so clearly wrong as to manifest some bias, partiality, or fraud.

3. The statutory lien given by this act for assessments is not divested by the sale of the lands under the foreclosure of a prior mortgage.

4. Lands lying outside of a geological survey, and the boundaries

given in the notice of application for the appointment of commissioners, cannot be assessed for benefits.

354 Argued at February term, 1880, before Justices Depue, Scudder, and Knapp.

J. G. Shipman & Son and B. Gummere for acceptance, Theodore Little for commissioners.

On exceptions to the assessments made by Amos Hoagland, James Boyd, and William L. Johnson, commissioners appointed by the supreme court, filed by Aaron Van Buskirk, Isaac Cummins, The Crane Iron Company, Robert L. Kennedy, Charles S. Wurts, and others.

*Opinion.*

The opinion of the court was delivered by Scudder, J. The proceedings of the board of managers of the geological survey and of the commissioners appointed by this court in the matter of drainage of the Great Meadows, on the Pequest river, have been before the court and decisions had thereon in 10 Vroom, 197 and 433, and 12 Vroom, 175.

The commissioners having now made their final report of the complete assessment, under section 2 of the act of 1871, Rev., 662, objections have been filed by some of the land owners who have been assessed for benefits.

These objections have been discussed elaborately and at great length, in apparent forgetfulness of the fact that some of the points taken have been already decided.

Thus it has been settled, that the "Act to provide for the drainage of lands," approved March 8, 1871, in its general scope and provisions is constitutional, and that the assessments on lands are not necessarily limited to the amount of benefit actually received under the law of eminent domain, but that the commissioners may distribute and assess the amount of the expenses in proportion, as near as they can judge, to the benefits derived from said drainage by the several parcels of land to be assessed. In other words, that the assessments for drainage are to be apportioned but not limited by actual benefits.

This result has been reached on the ground that these proceedings are by usage and by the consent of land owners who
355 are to be benefited and charged with the expenses, and no part thereof can be imposed on the public at large. State, Britton, Pros., *v.* Blake *et al.*, 6 Vroom, 208; S. C., 7 Vroom, 442.

The act of April 6th, 1868, Rev. 667, limiting the charges to benefits received, relates to assessments made by commissioners appointed by any court or by any justice or judge thereof, by or under any general or special law of this State heretofore enacted. This subsequent debt of 1871 is not, therefore, within the terms of the former act. These preliminary points having been already determined, other questions of fact remain to be considered under these exceptions. As they are stated in different forms and are numerous, it will be necessary to condense and group them for convenience. Perhaps the most important general objection is to the cost of the work. The total

amount of the expenditure reported by the commissioners is $107,-916.07. This so far exceeds the previous estimates and statements of cost of the improvement made at different times by those who are supposed to be competent to settle this question, that some of those who originally favored the work have since become hostile to it The object was to reclaim nearly six thousand acres of low, marshy, boggy, and wet land, and, to effect this rock reefs in the river were leveled, and widened, tree stumps, logs, brush, and temporary obstructions were removed, sand and sand bars cleared away, and the five main tributaries of Pequest river were cleared and opened for an aggregate distance of five and aquarter miles, in considerable portions of which the excavations averaged three and a half feet in depth. The commissioners report, also, that they have enlarged and partially rebuilt three of the public bridges over Pequest river to make it of sufficent capacity to carry the stream; they also say that almost the whole work has been executed, submerged, or in contact with water with increased cost over ordinary excavations.

The work was in progress for five or six years, and required plans, maps, surveys, levelings, loans of money and interest to make payments as the installments became due.

The allegations that the expenditures are excessive are supported only by general opinions, previous imperfect estimates, and, in
356 one instance, an offer to build a bridge for five hundred dollars which cost more. It is also objected that the charges of five dollars per day, given by law to each commissioner for every day they were actually employed, and their expenses, are excessive.

But we are given no particulars of a proper expenditure by each, and accurate measurements and calculations made by competent engineers and experts; nor is there any explicit denial of the actual number of days' services rendered by the commissioners, or the moneys expended by them for surveys and the expenses incident to the work.

It is needless to say that no reduction of the assessment could be made on such evidence, nor would the court be warranted in saying that the expenses and charges are not accurately stated. Nor will it help in the determination of this objection, that the expenses of the work are excessive; that several witnesses testify that, in their opinion, all the lands included in the survey are not worth the amount of the cost of the improvement. The silence of the great majority of persons whose lands are assessed would seem to be an answer to this objection. The amount of expenditure appears to be large, but the court can form no intelligent judgment as to how much is overcharged without some definiteness in the proof in opposition to the report of the commissioners.

The specific exceptions made by the objectors, that each of their lands is assessed beyond the benefits received, and that some are assessed where no benefit whatever appears, cover much of the evidence that has been taken. There are some cases of hardship shown where the owners of lands are poor and their property is encumbered. There is evidence to show that a large portion of the land formerly of Mary V. Wurts, deceased, which has been assessed

is higher than other land included in the assessment, and that its value is not increased by the drainage; but there is contradictory evidence showing that the exterior line of the survey was run where the wet land appeared, and that it was proper in some cases to assess lands lying above high-water mark on the meadows, because that water will gather and collect on land above the stream into which it discharges for ten or twelve feet elevation in a mile.

357 Professor George H. Cook, State geologist, in answer to the question, "Do you mean to say that land can be benefited by the drainage that lies above the high-water mark of the Pequest, supposing that the whole tract lies on the Pequest?" says: "I do; the best agricultural drainage I have ever seen—the best farming land—requires that the surface of the water should be kept eighteen inches below the surface for a meadow, and fully three feet below the surface for the best growing of wheat." Dr. J. Marshall Paul, who formerly owned these lands, made the attempt to dry them by ditches without lowering the bed of the Pequest; he succeeded only with a small portion of the land so that he could cultivate crops, and the ditches failing to clean themselves and filling up, the lands became again almost useless. The whole evidence tends to show that if the ditches are cleaned out the lands will be benefited, and can be cultivated.

In the case of the lands of the Crane Iron Company it is said that the property of others lies between these lands and the Pequest, so that they cannot be drained without ditching over the intervening land. There is evidence that an allowance has been made for such additional expense, and Professor Cook states in his evidence that it may take several years for the lands farthest off the Pequest to show the full benefit of the drainage. That it will depend on how the owner makes use of it, by means of drains and giving opportunities for the water to seek the Pequest; that the benefits will be hastened or retarded according to the management of the owners of the land.

With character of evidence so contradictory the court would not be justified in setting aside any part of this assessment upon the ground that lands were not benefited, and could not be, by the drainage, nor are the varying opinions of witnesses on the amounts of the assessments in particular cases sufficient to satisfy us that these have been overestimated by the commissioners. Amos Hoagland, the commissioner who appears to have given constant attention to the work through its whole progress, says that after they had heard the objections made by the land owners the commissioners met together and carefully looked over the different tracts of land, and could see no cause why they should change the assessment of any of them, and that he has seen none since, after he had been present and heard the examination of witnesses on these exceptions.

358 This court has said that the rule to guide them in reviewing the acts of officers appointed to make public improvements and report thereon is that their return cannot be set aside upon the testimony of others differing in judgment with them, unless it should appear that their determination was so clearly wrong as to manifest some bias, partiality, or fraud on the part of the offi-

cers, or that it was procured by corruption or some undue means. If it were not so, a party objecting might appeal from the judgment of the officers appointed for the purpose to the opinions or caprices of interested or irresponsible parties.

Stout *v.* Freeholders of Hopewell, 1 Dutch., 202; and in State, Hunt, pros., *v.* Rahway, 10 Vroom, 646, Justice Dixon says: Under the ninth section of the *certiorari* act of March 27, 1874, it is our duty in this class of cases to determine disputed questions of fact, and affirm or reverse the assessment in whole or in part, according to the justice of the case; still, in determining such questions the official certificates of the commissioners, under their oaths and in the line of their duty, are entitled to much weight as evidence, and only clear proof of great force will justify us in concluding that they are erroneous. These proceedings are not by *certiorari*, but on exceptions to the report; but even applying this most liberal rule, it appears that the evidence in the case is short of the degree of certainty and strength to authorize interference with the report of the commissioners, who have been upon the ground and examined the work, as the court has not done.

It is also objected that the work is not completed, but the commissioners and managers say that it is, and, in the language of some, it is a great success.

I have seen no contradictory evidence, excepting that the witnesses for the objectors say that the stream has not been dredged all the way up to the extent of the Sussex line; but to this it is answered that it is not necessary, for the current is cutting the bed of the stream above where the dredging ceased.

That it is said to be filling in some places is explained by the crookedness of the stream; and it is testified that such filling is accidental, and will be cleaned away by the current. It is also manifest that with earth embankments such washing will occur, and will make repairs necessary; but they do not show that the work has not been completed.

359 The objection that some of the bonds issued by the commissioners to pay for the expense were given to the contractors in payment of an excessive price for the work, and were sold below their par value, is not sustained by evidence, and is answered by the contradictory testimony of the commissioners, and of Abram H. Day, who, acting as secretary, says that he received the subscriptions for the drainage bonds, and that after Judge Boyd was taken sick he assisted in keeping his accounts as treasurer.

The exception made by Aaron Van Buskirk to the assessment on ten tracts of land on and as part of lot No. 50, containing 14.41 acres, and lot 93, containing 26.60 acres, assessed to Seldon T. Scranton, because said Scranton was not the owner when the assessment was made, having been sold under the foreclosure of a mortgage existing on these lands prior to the assessment, wherein the commissioners were made defendants, and set up no claim, and that the lands were sold and bought by the objectors clear of said assessment, is not tenable in law.

By section 2 of the act of 1871, the assessment made upon each

parcel of land, with lawful interest thereon, shall be a lien upon the said parcel of land, without regard to whom the owner or owners of said land may be. The commissioners were not bound to appear and defend the suit of foreclosure, and the objectors bought with full notice and knowledge of the lien of the assessment. This statutory lien could only be divested by payment made by the owner of the land, whoever he might be, of the amount of the assessment.

There is a manifestation of the Legislature's intent to made this lien paramount on the lands in the third section of the act, which gives to the purchaser under sale for the assessment the right to the immediate possession of the land, and to take the rents, issue, and profits thereof for the period or term of his purchase. Howell *v.* Essex Road Board, 5 Stew., 672.

The numerous objections that have been made, not included in the above statement, are not sustained by the proofs, and need not be mentioned.

It is doubtful whether some of the above considered might not have been more summarily disposed of, for the act says that the court "shall not reverse the assessment, or any part thereof, 360 except for some error in law, or in the principals of assessments made or committed by said commissioners." But in a matter of such general interest, affecting the security of the large amount of bonds that have been issued, we have thought it best to examine and decide each point of the objections made by the exceptants.

Special exceptions are made by James W. Tims, Phebe A. Wilson, and Ephraim Simonton and Aaron Van Buskirk, because certain lands assessed to them lie outside of the exterior line of the survey made by the board of managers of the geological survey.

All the lands assessed to Ephraim Simonton lie south of the beginning point of the managers' survey—this begins at the edge of the meadow in front of the Presbyterian church at Danville, and thence bearing northwesterly, &c. Robert L. Garrison, the surveyor who made the original survey, says that the beginning point, as laid by him, is on the edge of the meadow, in front of the Danville Presbyterian church, and that the Great Meadows end on the south at Larrison's bridge.

Professor Cook says that he considers near Larrison's bridge within a hundred feet above or more the lower end of the Great Meadows.

Garrison testifies also that the land assessed to Simonton, 24.66 acres assessed to Aaron Van Buskirk, and marked on the map as S. T. Scranton; 34.35 acres assessed to John Lewis, and now owned by Phebe A. Wilson, and 40.96 acres assessed James W. Tims all lie south of the exterior line of the geological survey. These lands were included afterwards in the commissioners' survey, because they adjudged them to be benefited by the drainage.

In 10 Vroom, 197, this court decided that only the lands described in the report of the managers of the geological survey, and in the notice of application for the appointment of commissioners, are liable for assessment.

The assessments as to these lands will be reversed, and it will be

referred to the commissioners to be corrected as to these assessments pursuant to the statute, and the other exceptions are overruled.

A true copy. BENJ. F. LEE, *Clerk.*

361 New Jersey Court of Errors and Appeals. June Term, 1881.

CHARLES STUART WURTS and ROBERT LENOX KENNEDY, Plaintiffs in Error,

*vs.*

AMOS HOAGLAND, JAMES BOYD, and W. L. JOHNSON, Commissioners, &c., Defendants in Error.

On Writ of Error to Supreme Court.

This cause coming on to be heard at the present June term of this court in the presence of the counsel of the parties respectively, and the court having examined the record and proceedings brought into this court by a writ of error in the above-stated cause, and being of the opinion that error does not exist, and that the judgment of the supreme court in this cause given should be affirmed.

It is thereupon, on this nineteenth day of July, A. D. eighteen hundred and eighty-one, by the court of errors and appeals now here, ordered and adjudged that the judgment of the supreme court in the above-stated cause, removed into this court by

362 writ of error, be, and the same is hereby, affirmed with costs.

And it is further ordered that the record and proceedings be remitted to the said supreme court, to be therein proceeded with in accordance with the judgment and practice of said court.

On motion of—

THEODORE LITTLE,
*Att'y for Defendants in Error.*

STATE OF NEW JERSEY:

I, Henry C. Kelsey, secretary of State of the State of New Jersey, and *ex-officio* clerk of the court of errors and appeals in the last resort in all causes, &c., do hereby certify the foregoing to be a true copy of an order made in the above-stated cause as the same is taken from and compared with the minutes of said court.

In witness whereof, I have hereunto set my hand and affixed my official seal, this thirty-first day of August, A. D. eighteen hundred and eighty-one.

[L. S.] HENRY C. KELSEY.

363 [Endorsed:] New Jersey court of errors and appeals. Charles Stuart Wurts and Robert Lenox Kennedy, plaintiffs in error, *vs.* Amos Hoagland & *als.*, commissioners, &c., defendants in error. In error to supreme court. Order for affirmance. Theo. Little, att'y. Filed Aug. 31st, 1881.

364 New Jersey Supreme Court. November Term, 1880.

In the Matter of the Drainage of the Pequest Meadows.

On Exceptions Filed to the Assessment of the Commissioner, &c.

The exceptions filed to the assessment made by Amos Hoagland, James Boyd, and William L. Johnson, commissioners, having been argued by counsel and duly considered by the court—

It is ordered that the assessment upon the lands of Ephraim Simonton upon $24\frac{60}{100}$ acres now owned by Aaron Van Buskirk, but marked on the commissioners' map as belonging to S. T. Scranton; upon $34\frac{35}{100}$ acres, marked on said map as belonging to John Lewis, but now owned by Phebe A. Wilson, and $40\frac{96}{100}$ acres upon lands of James W. Tims be reversed, for the reason that said lands lie outside of the drainage district, and that said assessment be referred back to said commissioners, to be corrected in pursuance of
365 the law in such case provided: and that for such purpose the commissioners have leave to take said assessment from the files of the court.

It is further ordered that all exceptions filed by said Ephraim Simonton, Aaron Van Buskirk, Phebe A. Wilson, and James W. Tims, except such as claim that their said lands are not within the drainage district, be overruled, and that the exceptions filed by the other exceptants be overruled, with costs to be paid by the exceptants.

Entered December 1st, 1880.

By the court: E. W. SCUDDER, *J.*

366 I, Benj. F. Lee, clerk of the supreme court of the State of New Jersey, do certify that the foregoing is a true copy of an order made in the above-stated cause by said court and entered in the minutes thereof.

In testimony whereof, I have hereto set my hand and the seal of said court, at Trenton, this twenty-first day of March, A. D. eighteen hundred and eighty-two.

[SEAL.] BENJ. F. LEE, *Clk.*

367 [Endorsed:] New Jersey supreme c't. Charles Stuart Wurts & *als. ads.* Amos Hoagland & *als.*, comm'rs, &c., of drainage. On exceptions, &c. Copy of judgment. Theo. Little, att'y.

368 Know all men by these presents, that we, Robert Lenox Kennedy, of the city and State of New York, and Charles Stewart Wurts, of the city of Philadelphia, and Robt. McAllister, of the city of Allentown and State of Pennsylvania, are held and firmly bound unto Amos Hoagland, James Boyd, and William L. Johnson, commissioners of drainage of the State of New Jersey, in the full and just sum of two hundred dollars, to be paid to the said Amos Hoagland, James Boyd, and William L. Johnson, commissioners, &c., their certain attorney or assigns; towhich payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the twenty-second day of October, in the year of our Lord eighteen hundred and eighty-one.

Whereas lately at a term of the supreme court of judicature of the State of New Jersey, in a suit pending between the said Robert Lenox Kennedy and Charles Stewart Wurts, exceptants, and the said Amos Hoagland, James Boyd, and William L. Johnson,
369 commissioners of drainage of the State of New Jersey, defendants, judgment was rendered against the said Robert Lenox Kennedy and Charles Stewart Wurts, and the said Robert Lenox Kennedy and Charles Stewart Wurts having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Amos Hoagland, James Boyd, and William L. Johnson, commissioner-, &c., citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of October next:

Now, the condition of the above obligation is such that if the said Robert Lenox Kennedy and Charles Stewart Wurts shall prosecute their said writ of error to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

ROBERT LENOX KENNEDY. [L. S.]
CHARLES STEWART WURTS. [L. S.]
ROBERT McALLISTER. [L. S.]

Sealed and delivered in the presence of—
WILLIAM ANDREWS.
W. M. KUHNS.

370 Approved October 27th, 1881.

JOSEPH P. BRADLEY,
*Asso. Justice Sup. C't U. S.*

370½ [Endorsed:] Sup. C't U. S. Bond. Robt. L. Kennedy & C. S. Wurts to Amos Hoagland & others. Filed Oct. 28th, 1881.

371 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the justices of the supreme court of judicature of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between Charles Stuart Wurts, a resident of the State of Pennsylvania, and Robert Lenox Kennedy, a resident of the State of New York, devisees of Mary V. Wurts, deceased, plaintiffs in error, and Amos Hoagland, James Boyd, & William L. Johnson, commissioners appointed by the said supreme court to carry out a system of drainage, defendants in error, on certain exceptions filed by the said Charles Stuart Wurts & Robert Lenox Kennedy to the last assessment made

by the said commissioners on & against certain lands late of the said Mary V. Wurts, & named & set forth in the said assessment, & which assessment was made by the said Amos Hoagland, James Boyd, & William L. Johnson, commissioners appointed by the said supreme court, on the application of the board of managers of the geological survey of the State of New Jersey, to carry out a system of drainage adopted by the said board of managers of the geological survey for the drainage of a certain tract of land known as "The Great Meadows," which is subject to overflow from freshets, & is low, marshy, boggy, & in a wet condition, & which lands, late of the said Mary V. Wurts, are situated in the township of Independence, in the county of Warren, in the State of New Jersey, and which assessment was filed in the office of the clerk of said supreme court on the eighth day of September, 1879, & was laid on the said lands for a portion of the cost & expense of carrying out the said system of drainage under the act of the Legislature of the State of New Jersey, entitled an act to provide for the drainage of lands, approved March 8th, 1871, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of
372 or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Charles Stuart Wurts and Robert Lenox Kennedy, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and eighty-one.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

Allowed by—

JOSEPH P. BRADLEY,
*Asso. Justice Sup. Court U. S.*

373 The answer of the justices of the supreme court of New Jersey within named: The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the United States Supreme Court in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C'k.*

[Endorsed:] Sup. C't of U. S. Ch. Stuart Wurts & Rob. Lenox Kennedy, pl'ffs in error, *v.* Amos Hoagland, James Boyd, & W. L. Johnson, commissioners, &c., def'd's in error. Writ of error to the sup. court of New Jersey. Ret'ble 2d Monday in Oct., 1882. J. G. Shipman, att'y for pl'ffs' in error. Filed Oct. 28, 1881. Benj. F. Lee, cl'k.

374 The United States of America to Amos Hoagland, James Boyd, and William L. Johnson, Commissioners of Drainage, to carry out a system of drainage under an act of the Legislature of the State of New Jersey, approved March 8th, 1871, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New Jersey, wherein Charles Stuart Wurts and Robert Lennox Kennedy are plaintiffs in error and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Joseph P. Bradley, Associate Justice
375 of the Supreme Court of the United States, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and eighty-one.

JOSEPH P. BRADLEY,
*Asso. Justice Sup. Court U. S.*

On this 28th day of November, in the year of our Lord one thousand eight hundred and eighty-one, personally appeared William K. Bowers before me, the subscriber, a United States commissioner, and makes oath that he delivered a true copy of the within citation to Amos Hoagland and to James Boyd and William L. Johnson, and to each of them personally, at their several places of residence, on the twenty-sixth day of November, A. D. 1881.

W. K. BOWERS.

Sworn to and subscribed, the 28th day of November, A. D. 1881.

J. G. SHIPMAN,
*U. S. Commissioner for the District of New Jersey.*

376 [Indorsed:] New Jersey supreme ct. Matter of drainage, &c. Charles Stuart Wurts and Robert Lennox Kennedy, p'tiffs in error., vs. Amos Hoagland & others, comm'rs, &c. Citation and proof of service. J. G. Shipman, att'y, &c. Filed March 25th, 1882.

377 *Assignment of Errors.*

Supreme Court of the United States.

CHARLES STUART WURTS & ROBERT LENOX KENNEDY, Devesees, &c., of Mary V. Wurts, De'd, Plaintiffs in Error,
*and*
AMOS HOAGLAND, JAMES BOYD & WILLIAM L. JOHNSON, Commissioners, &c., Defendants in Error.

Afterwards, that is to say, on the second Monday of October, in the year of our Lord one thousand eight hundred and eighty-two, in the Supreme Court of the United States, comes the said Charles Stuart Wurts and Robert Lenox Kennedy by their attorney and say that in the record and proceedings aforesaid and the judgment aforesaid given in the said court of errors and appeals of New Jersey, in the court of last resort in all cases, there is manifest error in this to-wit:

1. That the said court in the last resort in all causes gave
378 judgment in favor of the said Amos Hoagland, James Boyd and William L. Johnson, &c., defendants in error in said court, when by the constitution and laws of the land the said court should have given judgment in favor of the plaintiffs in error.

2. There is also error in this that the said court decided that the law under which the said proceedings were taken was not in violation of the Constitution of the United States, whereas in truth and in fact the said law under which the said proceedings were taken was in violation of the Constitution of the United States and is void.

3. There is also error in this that the said court decided that the said drainage is now and will be of great use and benefit to the lands assessed to the said Mary V. Wurts; whereas in truth and in fact the said drainage is not now and never will be of any use or benefit to the lands assessed to the said Mary V. Wurts.

379 4. There is also error in this that the said court decided that the system of drainage has been completed; whereas in truth and in fact the system of drainage has never been completed.

5. There is also error in this that the law under which the proceedings were taken is in violation of the Constitution of the United States, & is void, because the said proceeding is of no public benefit, but is a mere private enterprise, and is initiated on the judgment of five private land owners whose land may be of no real value, and takes the property of one private individual against his will & consent to pay for benefiting the land of another private individual. That the right of eminent domain which exists in the State exists only when the State can take the land of an individual against his will for public use, & then only upon just compensation first paid or tendered. But the law in question undertakes to take the property of an individual without any compensation, & actually compels him to pay large sums of money for benefiting other person's land. It also violates the obligation of a contract directly.
380 But the said court decided the opposite of all this, & decided the said law to be in all respects constitutional & binding.

There is also error in this, that the said law authorizing the said drainage is contrary to the principles of natural justice & is void, inasmuch as it undertakes to take one man's property without his consent to pay for benefits done to another man's property. Yet, the said court decided the opposite of all this, & upheld & sustained the said law.

There is also error in this, that the said commissioners in making their assessments committed error in law, & also erred in the principles of the assessment, so made by them, yet the said court decided the opposite of all this, and held that the said commissioners did not commit any error in law in making said assessment, & that thus did not err in the principles of the assessment so made by them.

There is also error in this, that the said pretended benefits
381 assessed by the said commissioners amount to over one hundred & seven thousand dollars, when all the lands embraced within the said assessment & within the said survey are not worth any thing like that sum of money, & will not sell for that sum in the market, and the amount assessed upon the lands of the plaintiffs in error exceeds the value of the lands so assessed. Yet the said court decided the opposite of all this, & held that there was no error in this respect.

There is also error in this, that the said court decided that the act to provide for the drainage of lands, approved March 8th, 1871, is constitutional, & the assessments made thereunder are to be apportioned but not limited by special benefits as under the law of eminent domain, whereas in truth & in fact the land law is unconstitutional & void, & the assessments made thereunder are null & void, &, if assessed at all, are to be apportioned and limited to the amount of special benefit received.

There is also error in this, that the said court decided that there had been so much legislation in New Jersey upon this subject, that there was a local common law to sustain the law in question, whereas in truth & in fact no legislative or local law could legalize such a law as the one in question.

382 Wherefore the said Charles Stuart Wurts and Robert Lenox Kennedy, plaintiffs in error, pray that the judgment aforesaid, by reason of the error aforesaid & for other errors appearing in the record of proceedings aforesaid, may be reversed, annulled, & for nothing holden; & that the said assessment made upon the land of the said Mary V. Wurts, of which the plaintiffs in error are the devisees, may be judged illegal and unwarranted, and may be vacated and set aside and wholly annulled, and the said plaintiffs in error may be restored to all things they have lost on occasion of the said judgment.

J. G. SHIPMAN,
*Attorney for the Plaintiffs in Error.*

383 [Endorsed:] Supreme Court U. S. October term, 1882. Ch. Stuart Wurts & Rob't Lenox Kennedy, plaintiffs in error, and Amos Hoagland & others, com'r., &c., defendants in error. Assignment of error. J. E. Shipman, att'y. Filed Mar. 28, 1882.

384 I, Benj. F. Lee, clerk of the supreme court of the State of New Jersey, do hereby certify that I have compared the above and foregoing with the original record and proceedings now remaining of record and on file in my office in the above entitled cause, and that it is a correct transcript therefrom, and also a true copy of the security on the writ of error, and the original citation and service thereof, and also a copy of the opinion of the supreme court.

In testimony whereof, I have hereto set my hand and the seal of said court, at Trenton, this twenty-eighth day of March, A. D. eighteen hundred and eighty-two.

[SEAL.] BENJ. F. LEE, *Clk.*

385 [Endorsed:] New Jersey supreme c't. Charles Stuart Wurts & *als. ads.* Amos Hoagland & *als.*, comm'rs of drainage, &c. In error, &c. J. G. Shipman & Son, att'ys.

386 New Jersey Supreme Court. June Term, 1881. In Error On Remittitur.

CHARLES STEWART *et al. vs.* AMOS HOAGLAND *et als.*, Com'rs, &c.

It appearing by the remittitur now here returned from the court of errors and appeals, by which it appears that the judgment of this court was in and by said court of errors and appeals in all things affirmed, with costs—

It is ordered that said remittitur be filed, and that said cause be proceeded with according to law.

Entered August 31st, 1881.

On motion of— THEO. LITTLE, *Att'y.*

A true copy.

BENJ. F. LEE, *Clk.*

It is agreed that the above may be made part of the record in the above entitled cause.

J. G. SHIPMAN,
*For Pl'ffs in Error.*
THEO. LITTLE,
*For Def'ts in Error.*

387 [Endorsed:] New Jersey sup. c't. Chs. Stuart Wurts *et al. vs.* Amos Hoagland & others, com.

[Endorsed:] Supreme Court U. S. 1882, October term. No. 819. Chas. Stuart Wurts *et al.*, pl'ff in error, *vs.* Amos Hoagland *et al.* Stipulation of counsel and addition to record. Filed 16th Oct., 1882. Office Supreme Court U. S. Filed Oct. 16, 1882. James H. McKenney, clerk.

Endorsed on cover: New Jersey supreme court. No. 193. Charles Stuart Wurts and Robert Lenox Kennedy, plaintiffs in error, *vs.* Amos Hoagland, James Boyd, and William L. Johnson, commissioners of drainage, &c. Filed 5th April, 1882.

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114-606

Office Supreme Court U. S.
FILED.

# SUPREME COURT

OF THE

# UNITED STATES.

Charles Stuart Wurts, and
Robert Lenox Kennedy,
*Plaintiffs in Error,*

*vs.* 193

Amos Hoagland, and others,
*Defendants in Error.*

Brief for the Plaintiffs In Error.

J. G. SHIPMAN & SON,
*Attorneys for the Plaintiffs.*

THEODORE LITTLE,
*Attorney for the Defendants.*

BELVIDERE, N. J.:
BELVIDERE APOLLO PRINT.
1884.

# SUPREME COURT OF THE UNITED STATES

Charles Stuart Wurtz, and
Robert Lenox Kennedy,
Plaintiffs,

*vs.*

Amos Hoagland,
James Boyd, and
William L. Johnston,
Commissioners of Drainage, &c.,
Defendants.

In Error.

## BRIEF FOR THE PLAINTIFFS IN ERROR.

The record in this case is brought before this Court by a writ of error directed to the Supreme Court of the State of New Jersey. The cause was finally decided by the Court of Errors and Appeals in the last resort, the judgment of the Supreme Court was affirmed, and the record was remitted to the last named Court, and the writ was in consequence taken to the Supreme Court, which then held the record, and it was sent from that Court here.

The proceedings out of which this litigation has arisen were initiated under an Act of the Legislature of the State of New Jersey, entitled "An act for the drainage of lands, approved March 8, 1871," and the supplement thereto, approved March 19, 1874, to be found in the Revision of the laws of New Jersey, pages 662 and 665. As the act and supplement are both essential to a fair understanding of the case they are both given in full.

# AN ACT TO PROVIDE FOR THE DRAINAGE OF LANDS,

*Approved March* 8, 1871.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the board of managers of the geological survey, on the application of at least five owners of separate lots of land included in any tract of land in this State which is subject to overflow from freshets, or which is usually in a low, marshy, boggy or wet condition, shall be and hereby are authorized and empowered to examine such tract, and if they shall deem it for the interest of the public and of the land owners to be affected thereby, they are further authorized from time to time to make surveys of any such tract or tracts of land, and to decide upon and adopt a system of drainage for draining the same, and to cause maps of the same, together with the plans of drainage by them adopted to be made; and for this purpose they shall be authorized to call in the assistance of the State Geologist and such other persons as they may deem expedient, and when they shall have completed their said surveys, maps and plans, they shall make a written or printed report of the same to the Supreme Court of this State; and thereupon it shall be the duty of the said Court at the same or next stated term thereof, or as soon as can conveniently be done upon reasonable notice given to that effect and published in a newspaper circulating in the county where such tract of low lands is situate, to appoint three commissioners (not interested in the lands to be drained) to superintend and carry out the drainage of any particular tract or tracts aforesaid, whose duty it shall be to carry out and execute the system of drainage which may thus have been adopted and reported by the said board of managers in reference to said particular tract or tracts; *provided*, that if, at the

time fixed for such appointment of commissioners, it shall appear to the Court by the written remonstrance of the owners of a majority of the said low and wet lands, duly authenticated by affidavit, that they are opposed to the drainage thereof at the common expense, then the said Court shall not appoint such commissioners as is directed in this section.

2. *And be it enacted*, That the said commissioners, before entering upon their duties, shall take an oath before the Chancellor or a Justice of the Supreme Court, faithfully to perform the duties of their office, and shall cause the same to be filed in the Clerk's office of the Supreme Court, and shall thereupon have full power to cause the said tract of land, for the drainage of which they shall have been appointed commissioners, to be drained in accordance with the general plan of the said board of managers; and for that purpose the said commissioners and all contractors or other persons employed by them or under their authority, shall have power to enter upon any lands for the purpose of executing the requisite work, or procuring materials therefor; and after the completion of said work, the expense thereof and of all materials used therefor, including the compensation of said commissioners (estimated at the rate of five dollars per day for every day actually employed) and also the expenses of the said board of managers, shall be made up by said commissioners and returned to the said Supreme Court in a report to be made by them, together with a general outline, description or deliniation of the lands and territory which, in their judgment, ought to contribute to the said expense; notice of which report shall be given in some newspaper or newspapers circulating in the vicinity of said lands for the space of four weeks, at least once in each week, in order that any persons interested may examine said report, and, if they see fit, file objections to the same; if any such objections duly verified on oath, be filed within said period of four weeks, the Supreme Court shall determine upon the same in a summary manner, and with as little delay as

possible, and shall thereupon, without further notice, make a rule or order directing the said commissioners to distribute and assess the amount of said expense and interest upon the lands contained within the territory reported by them originally or as corrected by the Supreme Court, in proportion, as near as they can judge to the benefit derived from said drainage by the several parcels of land to be assessed, and in making said assessment the several parcels of land assessed may be designated by the name of the owner or the occupier, or in such other manner as may be most convenient in each case, and the assessment may be made either upon each separate parcel in gross, or at a rate per acre, and the assessment made upon each parcel of land, with lawful interest thereon, shall be a lien upon the said parcel of land without regard to whom the owner or owners of said land may be; and when the said assessment shall be completed, the same shall be deposited in some convenient place for inspection by the parties interested; and notice of the completion of said assessment, and of the place where the same shall be so deposited, shall be given in at least two newspapers circulating in the vicinity of said lands, and published at least once a week for six weeks, which notice shall designate a time and place when and where the said commissioners will meet to hear objections to said assessment; and the commissioners having heard and decided upon such objections as shall be made to them, they shall proceed to complete their assessment and shall file the same in the Clerk's office of the Supreme Court, and a copy thereof, or of so much of the same as shall be made on lands in any one county shall be filed in the Clerk's office of said county, and notice of the filing thereof shall be given in at least two newspapers, circulating as before mentioned, once a week for at least four weeks, after which, if no objections be made to said assessment, the same shall be confirmed and made absolute by the Supreme Court; if objections to said assessment be filed in the said period of four weeks, the Supreme Court shall hear and determine said objections in a sum-

mary manner and with as little delay as possible; but they shall not reverse said assessment, or any part thereof, except for some error in law, or in the principles of assessment made or committed by said commissioners; if for any such cause the said assessment or any part thereof shall be reversed, it shall be again referred to the said commissioners to be corrected in accordance with the decision of the Court in that behalf, and when corrected and filed as before, four weeks' notice as aforesaid shall be given thereof, after which, if no further objections be made, the said assessment, as corrected, shall be confirmed; but if any further objections be made, the same shall from time to time be considered and determined as before, until the Court shall finally confirm the assessment as duly modified and corrected; and when said assessment shall be finally confirmed, the said commissioners shall give public notice in two newspapers circulating as aforesaid, once in each week for four weeks, requiring the several owners or other parties interested in the lands assessed, to pay the assessment thereon at such time and place in the vicinity of said lands as shall be designated by the commissioners, at which time and place the said commissioners, or one of them, or some person or persons by them appointed, shall attend to receive the said assessments.

3. *And be it enacted*, That if the assessment on any parcel or parcels of land be not paid at or before the time mentioned in the said notice for paying the same, the commissioners are hereby authorized and empowered to employ and authorize an agent or agents to demand and receive the said assessments which may be so unpaid, together with interest thereon, and two per centum commissions for collecting the same, which agent or agents shall proceed to demand payment of all persons whose lands shall be assessed, and whose assessments shall be placed in their hands respectively for collection, so far as such persons may be known and may reside in the county in which such lands shall be situate, and not incapacitated to transact business; but if the owner of any such lands shall

not be known, or shall not reside in said county, or cannot be found by said agent or agents, or shall be under age, insane, or otherwise incompetent to transact business, or if, on being found, and such demand being made, he or she shall neglect or refuse to pay such assessments, with interest and costs, the said commissioners shall be and they are hereby authorized and empowered to sell said parcel of land for the least number of years that any person will take the same, and pay the assessment thereon with interest thereon, and the costs and expenses of such sale shall be the same as allowed to Sheriffs in like cases, which term shall be ascertained by a public bidding and outcry, of which two months' notice shall be given in a newspaper circulating in the vicinity of said land, and when such sale shall be made, the said commissioners, on receiving from the purchaser the amount of the assessment, with interest, costs and expenses of sale, shall give him or her a deed for the land for the period or term for which the same was bid off, and thereupon the said purchaser shall be entitled to immediate possession of said land, and to take the rents, issues and profits thereof, for the period or term aforesaid, and if possession be denied or resisted by any person or persons, the Supreme Court, on application made thereto, and the fact of such sale being shown by affidavit and a copy of the commissioner's deed, shall make an order directing the Sheriff of the county in which said lands lie to put the said purchaser into possession.

4. *And be it enacted*, That if the system of drainage which may be adopted in any case herein provided for shall require the obstruction or injury of any water course, or the alteration or lowering of any mill dam, or the permanent occupation of any land, whereby the owner or occupier thereof shall be injured, or shall sustain damage to his legal rights, such damage shall be estimated and appraised by the said commissioners, and shall form part of the expenses of such drainage to be raised by assessment as herein directed; *provided* that any person whose damage may be so assessed shall and may appeal from the

award of said commissioners, so far as relates to the amount of said damage, to the then or next Circuit Court of the county in which such damage shall occur, which Court shall cause a jury to be empanneled to try the said appeal without further pleadings and without other notice of trial than the service of a copy of said appeal upon the said commissioners, or one of them, designating the time of trial at least ten days prior thereto, and the verdict of such jury shall be conclusive as to the amount of said damage, unless set aside for some illegality or misdirection of the Court, but such appeal shall not have the effect of delaying or interrupting the proceedings of said commissioners, who shall be authorized to assume the amount of said damage to be so assessed by them until the same shall be varied by such verdict of a jury, and on paying or tendering the amount so assessed by them, the said commissioners, to the party injured, or in case he be a non-resident of this State, or cannot be found, or is under any incapacity to receive the same, upon paying said amount so assessed by them into the said Supreme Court, the said commissioners may take possession of the property in question and proceed to execute the work necessary to effect said drainage in accordance with the plan adopted as aforesaid; if the verdict of the jury be the same as, or shall be less than the award of the commissioners, the party appealing shall pay the costs of the appeal, otherwise no costs shall be recovered on either side; if the verdict shall be greater than the award of the commissioners, the excess shall be added to the expenses to be assessed for such drainage, at any time before the actual collection thereof, and shall be distributed to the various parcels of land to be assessed therefor in the same proportion as the other expenses shall be assessed upon the same; if such excess be not ascertained until after the general assessment has been made, and the collection thereof commenced, a new assessment of such excess shall be made in the same proportion as the general assessment, and shall be collected in the same manner.

5. *And be it enacted*, That to enable the said commissioners to raise the necessary moneys to carry on the work of draining said lands, they are hereby authorized to borrow such sums from time to time as may be necessary for that purpose at the legal rate of interest, and to give their bonds as such commissioners therefor, and to pledge for the repayment thereof, the assessment to be made as aforesaid; *provided*, that the said commissioners shall not be personally bound to pay the said bonds or any interest thereon; *and provided further*, that if the said interest on said bonds (which interest shall not be made payable at shorter intervals than once in six months) shall not be paid, as the same may become due, it shall bear lawful interest until paid.

6. *And be it enacted*, That any vacancy happening among the commissioners so to be appointed by the Supreme Court shall be filled by the said Court at the first stated term after such vacancy may occur, but until such vacancy is filled, the other two commissioners shall have full power to proceed with the duties of the commissioners, and in all cases the action or decision of any two of the commissioners shall be valid and sufficient; and the compensation of the commissioners and also of the board of managers of the geological survey, when engaged on any tract or in reference to the drainage thereof shall be five dollars per day, and the expenses of said board of managers for their own time and services, and for compensation paid to any other persons in examining, surveying and reporting, in reference to any tract of land which they shall report as necessary or proper to be drained, shall be added by the commissioners to the expenses to be assessed for the drainage of said tract.

7. *And be it enacted*, That if at any time after any tract of land has been drained under this act, the ditches or other works of drainage shall require alterations or repairs, the Supreme Court on the application of any person interested in such drainage may appoint three commissioners to make said repairs, who shall qualify and proceed

in the same manner as the original commissioners, and the expense when footed up shall be assessed upon the same lands which were assessed for the expense of the original drainage; and in precisely the same proportion, and the same remedy shall be had for the collection thereof.

8. *And be it enacted*, That this act shall not extend to any salt marshes or lands flowed by tide water.

9. *And be it enacted*, That this act shall take effect immediately.

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# A SUPPLEMENT

To the act entitled "An act to provide for the drainage of lands," approved March eighth, eighteen hundred and seventy-one.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That when the assessment made by the commissioners appointed to carry out and execute the drainage of any tract of land by virtue of the act to which this act is a supplement, shall have been approved and confirmed by the Supreme Court, the said commissioners may either collect the whole amount of the same immediately, according to the provisions of said act, or at their discretion, from time to time, and at different times collect such proportionate parts of the same as may then be required for the current expenses of said drainage and the interest, on any money raised by said commissioners by the issue of bonds in pursuance of said act, and for a sinking fund for the redemption of such bonds.

2. *And be it enacted*, That if the said commissioners, after having commenced the drainage of such tract, and proceeded therewith shall before the drainage of the same shall be completed, be compelled to suspend the completion thereof, from any inability at that time to raise the money required therefor, they shall proceed to ascertain the tracts of land benefited or intended to be benefited by

said drainage, and the relative proportions in which the said respective tracts have been or will be benefited thereby, and also the expenses already incurred in said drainage, and as near as may be the additional expenses required for the completion thereof, which expenses they shall assess on the respective tracts of land in the proportions aforesaid, and make report of said assessment and their proceedings in the premises to the Supreme Court, who shall hear and determine any objection thereto in the manner prescribed in the act to which this act is a supplement, and after said assessment shall have been approved and confirmed by said Court, the said commissioners shall collect the same in the manner prescribed by said act, either at one time or at different times, in such installments as may be required for the payment of said expenses, and apply the moneys so collected to the payment thereof.

3. *And be it enacted*, That any lands conveyed for the purpose of effecting said drainage, shall be conveyed to the said commissioners in trust, for the use and benefit of all the owners of said lands proposed to be drained, but said owners shall have no power to encumber their respective interests in the same.

4. *And be it enacted*, That the appeal given by the fourth section of the act to which this act is a supplement, to the owner or occupier of any lands who shall be injured or sustain damage in his legal rights by said damage from the award of the assessment of said damages by the said commissioners, shall be made to the Supreme Court instead of the Circuit Court of the county in which the lands lie as provided by said act, and the Supreme Court shall order said appeal to be heard before the Circuit Court of such county as the Supreme Court shall deem proper, and such Court shall cause a jury to be empanelled to try said appeal, and shall try the same in the same manner as is directed in said fourth section of said act.

5. *And be it enacted*, That this act shall take effect immediately.

Approved March 19, 1874.

And in order that the Court may see where the body of men came from, mentioned in the first section of the act, we quote a portion of the act of the Legislature of the State of New Jersey which created the body.

The act is an act entitled "An act to complete the Geological survey of the State," approved March 20, 1864. It will be found in the Revision of New Jersey, page 1137.

The preamble recites that, whereas the Senate and General Assembly of the State of New Jersey by an act passed March, A. D., 1854, authorized a Geological survey of the State to be made, which survey was subsequently suspended by the State; and it further recites that, whereas the State Agricultural Society, under the authority granted to it by the act of February 25, 1863, has shown a laudable zeal in continuing the said survey and that it appears there is an unexpended balance in the treasury, and that it is the duty of the State to develop and render available to the fullest extent the *facts* relative to its great natural resources, as also of its agricultural, mining, mechanical and other industrial interests, therefore it is directed by the first section of the act that the duty of completing the said survey should be resumed by the State, and that the survey should be completed within four years and for a certain price.

The second section appropriates the sum necessary to complete the survey.

The third section appoints the surveyor.

And the fourth section, which is given in full, creates a board of managers.

SECTION FOUR. "That to promote the objects which "this act has in view there shall be a board of managers "of the same to consist of eleven members, one of whom "shall be the Governor of the State, who also shall be "President of the board, and two members from each of "the five Congressional Districts of the State. And the "State Geologist shall make his annual report to the Pres- "ident, who shall appoint from the members of the board "a committee to examine the annual accounts of expendi-

"ture. And the President shall submit the same and all "matters pertaining to the survey at the first following "session of the Legislature. And it shall be lawful for the "President and board of managers, or a majority of them, "to make yearly agreements with the State Geologist as "to his own and the salaries of his assistant or assistants; "but such temporary assistance as may be needed, the "purchase of the necessary implements and materials, the "means necessary for transportation, and all other inci-
10 "dental expenses, shall be under the control of the State "Geologist, and it shall be the duty of the members of the "board, in addition to those already specified, to furnish "from time to time to the State Geologist any and all in- "formation which will contribute to the more full and "complete development of the facts relating to the agri- "cultural, mining, mechanical and other industrial interests "of the State."

The board of managers created by this act appointed Prof. George H. Cook, of New Brunswick, State Geologist,
20 surveyor, and he, with his assistants, made a survey of a tract of land known as the 'Great Meadows," lying in the counties of Warren and Sussex, comprising five thousand, five hundred acres of land. He reported to the board that this land could be made valuable, and that the expense of its improvement might cost *twenty thousand dollars*. This report was printed and extensively circulated, and in consequence of it some five or more persons, separate lot owners of the said body of land, were induced to sign an application to the managers to examine said Great Mead-
30 ows and to decide upon and adopt a system of drainage for draining the same under the act of the Legislature aforesaid.

The whole number of land owners was about one hundred and thirty. Of this tract of land Mrs. Mary V. Wurts, the ancestress of the plaintiffs in error, owned six hundred and seventy-four and eighty-eight hundredths acres; about *one eighth of the whole*.

A large number of the persons who had signed the ap-

plication, together with one hundred of the land owners, being more than two thirds of the whole number, soon after the appointment of the commissioners signed a protest and caused it to be served upon the commissioners forbidding them to proceed with the work. But unfortunately it came after the time limited in the act had expired, but it was made before any work had been done or any expense incurred. The application will be found on page 221 of the Record; the protest on pages 158 and 159 of the Record. Upon the application of the persons above mentioned, the managers of the Geological survey made an amended survey of these same lands through Prof. Cook, or his assistants, and filed it in the office of the Clerk of the Supreme Court of the State of New Jersey.

Upon the filing of this survey; upon the application of the said managers, commissioners were appointed under the first section of the act of 1871 above recited. These commissioners made a new survey, and a calculation which greatly exceeded the estimate of Prof. Cook, and fearing they could not proceed with their work to completion, the supplement above set forth was obtained to enable them to collect the assessments in advance of the completion of the work. That assessment amounted in the whole to the sum of one hundred and seven thousand, nine hundred and sixteen dollars and seven cents. It will be found on pages 10 and 11 of the Record.

They laid assessments on the lands of Mary V. Wurts as follows:

"Tract No. 41, owned by Mary V. Wurts, containing two hundred and seventy-six acres, and bounded on the north by her other lands, on the south and east by lands of Seldon T. Scranton, and on the west by lands of Robert L. Garrison."

"Tract No. 60, owned by Mary V. Wurts, containing three hundred and ninety-eight and eighty-eight hundredths acres, and bounded on the east by her other lands, on the north by lands of Polhemus Cummins, estate of George Batley, deceased, Nelson N. Cummins and others,

on the south by lands of parties unknown, Henry Bell and others, and on the west by lands of Selden T. Scranton and Henry Bell."

Upon these lands, amounting to six hundred and seventy-four acres and eighty-eight hundredths of an acre, the commissioners laid an assessment, as follows:

| | | |
|---|---|---|
| No. 41.—Mary V. Wurts— | 276 acres ..... | $5,168.00 |
| No. 60.—Mary V. Wurts— | 398.88 " ..... | 8,079.84 |
| Total, | 674.88 " | $13,247.84 |

Mrs. Mary V. Wurts, being then living, filed exceptions to this report and assessment, alleging, among other things, that the drainage of the said meadows according to the plan adopted was of no use or benefit to her and that the amount assessed against the tracts of land was greatly in excess of the amount of benefit which said tracts would receive, if they would receive any, and because the said law was unconstitutional. These objections will be found on page 162 of the Record.

The matter was argued before the Supreme Court of the State of New Jersey, and that Court held that the supplement to the act of 1871 above recited was unconstitutional and set aside the assessment. The case will be found reported in 10th Vroom's Reports, page 433.

A writ of error was taken by the commissioners from this judgment of the Supreme Court to the Court of Errors and Appeals of the State of New Jersey and the judgment of the Supreme Court was affirmed at the March term, 1879.

The opinion of the Court of Errors and Appeals, as delivered by Chief Justice Beasley, will be found in 12th Vroom's Reports, page 176. As that opinion deals extensively with the question of the constitutionality of the law, it will be quoted in full hereafter.

Upon the setting aside of this first assessment and the overthrowing of the supplement upon which it was based, the commissioners on the sixth day of September, 1879, filed a new assessment upon the said lands, as follows:

"The undersigned commissioners named in the order made by the Supreme Court of this State, bearing date on the twenty-third day of June, A. D., 1879, a copy of which is hereto annexed, do hereby certify that in pursuance of the directions contained in said order, we have distributed and assessed the amount of the expense of the work done by us—that is to say, the sum of $107,916.07—upon the lands embraced within the territory heretofore reported by us as that which in our judgment ought to contribute to such expense *in proportion*, as nearly as we can judge, to the benefits derived from said drainage by the several parcels of land to be assessed, to wit:

| | | |
|---|---|---|
| No. 41.—Mary V. Wurts—276 acres ..... | | $5,568.00 |
| No. 60.— " " —398.88 " ..... | | 7,779.84 |
| Total, | 674.88 " | $13,347.84 |

making the total number of acres six hundred and seventy-four and eighty-eight hundredths, and the sum assessed, thirteen thousand, three hundred and forty-seven dollars and eighty-four cents, being within $100 of the amount of the former assessment, the only important alteration being a variation in the assessments on the two tracts of land, on which interest was charged from September 24, 1881. This assessment will be found on pages 14 and 16 of the Record.

Upon the final confirmation of this report the commissioners proceeded to collect the assessments. The assessments, with perhaps one or two exceptions, were not paid and the commissioners proceeded to advertise the lands for sale in the manner, as they alleged, pointed out in the act. The whole number of lots assessed was 128. Of these, 123 were advertised for sale.

As will be seen by the Record, the commissioners put out the work of drainage to contractors, and they took for their pay the bonds issued by the commissioners. Before the day of sale these persons holding the bonds appointed three of their number to buy the lands that might be sold. The great body of the land was sold by the commissioners

and purchased by this committee for the bond-holders. Afterward these trustees, as they called themselves, resold the lands and they were mostly bought in again by the bond-holders. The lands of Mrs. Wurts were sold for a term of *one thousand years*. The 276 acres for about seven dollars per acre, or a little less, and the other tract for a trifle more. It will be thus seen that the plaintiffs' lands have been completely confiscated and sold away for a period of time so extensive that it is equivalent to a fee for a pretended benefit, which had no existence in fact, which was made without their or their ancestress' consent and against her and their will.

Mrs. Mary V. Wurts having, in the meantime, departed this life and having by her last will and testament devised her lands, embracing among others the lands in controversy, to the plaintiffs in error, the said Charles Stuart Wurts being a resident of the State of Pennsylvania and the said Robert Lenox Kennedy a resident of the State of New York, obtained permission of the Supreme Court to file exceptions to the last named report. These exceptions will be found on pages 7 and 8 of the Record.

The eleventh and twelfth of these exceptions related to the unconstitutional character of the said law, and alleged in express terms that the said act under which the proceedings were had was in violation of the Constitution of the United States, and was contrary to the principles of natural justice, and was void because it took one man's property to pay for another man's property.

At the same time the Crane Iron Company, a corporation of the State of Pennsylvania, and a large number of land owners, several of them being the persons who had signed the original application, filed exceptions to the said assessment.

The exceptions of the Crane Iron Company will be found on pages 1, 2 and 3 of the Record. They are substantially the same as those filed by the present plaintiffs in error. The exceptions of thirteen other land owners will be found on pages 4, 5, 6 and 7 of the Record.

Some of these persons alleged that their lands lay outside of the said Geological survey. And the testimony taken in the case sustained it, and the Court set their assessment aside, but affirmed the assessment against the plaintiffs in error. A large amount of testimony was taken in the case before the argument in the Supreme Court. The exceptions were argued in the Supreme Court before three Justices, Messrs. Depue, Scudder and Knapp. The opinion was delivered by Mr. Justice Scudder. It will be found on page 237 of the Record. We quote, in this place, only an extract or two from that opinion, in order that the Court may see what was said by the Court on the constitutional questions. We shall advert to the opinion again. The justice says:

"The commissioners having now made their final report "of the complete assessment under section two of the act "of 1871, Rev. 662, objections have been filed by some of "the land owners who have been assessed for benefits. "These objections have been discussed elaborately and at "great length, in apparent forgetfulness of the fact that "some of the points taken have already been decided; thus "it has been settled that the 'Act to provide for the drain-"age of lands,' approved March 8, 1871, in its *general* "scope and provisions is constitutional and that the assess-"ments on lands are not necessarily limited to the amount "of benefit actually received under the law of eminent do-"main, but that the commissioners may distribute and as-"sess the amount of the expenses in proportion, as near as "they can judge, to the benefits derived from said drainage "by the several parcels of land to be assessed. In other "words, that the assessments for drainage are to be appor-"tioned but not limited by actual benefits."

"This result," the Justice adds, "has been reached *on the* "*ground* that these proceedings *are by usage and by the* "*consent of the land owners* who are to be benefited and "charged with the expenses, and no part thereof can be "imposed on the public at large," and cites State, Britton Pros., vs. Blake, et al., 6 Vroom, 208. S. C., 7 Vroom, 442.

This forms the basis of the Courts' opinion. The other parts are mainly a discussion of the facts contained in the Record. As we shall have occasion in another part of this brief to refer to this part of the Courts' opinion, as well as to some other portions of it, we forbear to offer any comments upon it in this place.

The plaintiffs in error removed the judgment into the Court of Errors and Appeals in the last resort in all causes. And that Court, at the June term 1881, affirmed the judgment of the Supreme Court in all things; which judgment will be found on page 262 of the Record. No opinion was delivered in the Court of Errors and Appeals; that Court, during the course of the argument, declaring that its *final deliverance* had been made in the opinion delivered by the Chief Justice in 12 Vroom, 175.

The Record was thereupon remitted to the Supreme Court of New Jersey, and this writ of error was sued out and the proceedings were remanded into this Court for final adjudication. The preliminary motions made in the case in this Court will be found in 105 U. S. Reports, 701 and in 108 U. S. Reports, page 5.

## ASSIGNMENT OF ERRORS.

The plaintiffs in error assign the following errors, upon which they pray for a reversal of the judgment.

FIRST.—The last Court below held that the law under which the said proceedings were taken and on which the said judgment was founded was not in violation of the Constitution of the United States, whereas, in truth and in fact, the said law does violate the Constitution of the United States.

SECONDLY.—The act of Assembly of March 8, 1871, upon which the said judgment and proceedings are founded, violates the Constitution of the United States in this, that it deprives the plaintiffs in error of their property without due process of law, and denies to them the equal protection of the law and violates the first section of the 14th Amendment to the Constitution of the United States.

*Wherefore*, For the errors aforesaid and for other errors apparent on the Record, the plaintiffs in error pray that the judgments aforesaid may be reversed and for nothing holden, and that the plaintiffs in error may be restored to all things they have lost by the judgment and proceedings aforesaid.

We say, in the first place, that this law *does* deprive the plaintiffs in error of their property without due process of law, and thus violates the portion of the Constitution above quoted. This is a subject which has undergone much discussion and the deliverances of this Court have been so frequent that we need do little more than refer to the authorities on the subject and extract from them the principle established by the Court.

The latest deliverance of this Court is to be found in the case of Hagar vs. Reclamation District No. 108, reported in 111 U. S. Reports, page 707. It refers to all the preceding cases and it will only be necessary to refer to this case.

This Court in that case, speaking through Justice Field on page 707, says, "That clause of the 14th Amendment is intended as an additional security against the arbitrary deprivation of life and liberty and the arbitrary spoilation of property." Neither can be taken without due process of law. What constitutes that process it may be difficult to define with precision so as to cover all cases. It is, no doubt, wise, as stated by Justice Miller, in Davidson vs. New Orleans, to arrive at its meaning by the gradual process of judicial inclusion and exclusion as the cases presented for decision shall require with the reasoning in which such decisions may be founded. It is sufficient to observe here that by due process of law is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by law; it must be adopted to the end to be attained.

The clause in question means, therefore, that there can be no proceeding against life, liberty or property which

may result in the deprivation of either without the observance of the general rules established in our system of jurisprudence for the security of private rights.

And the Court, through the same Justice, on page 711, states the further rule "that whenever by the laws of the State, or by State authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole State or for some mere limited portion of the community, and these laws provide for a mode of confirming or controlling the charge thus imposed in the ordinary courts of justice, with such notice to the person of such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law."

We might refer the Court to the other cases that they may see the character of the tribunals before which the proceedings were instituted and the causes for which the property was about to be taken. Other cases are:

Davidson vs. New Orleans, 96 U. S. Reports, 97.

Hurtado vs. California, 110 U. S. Reports, 516, 536.

The Slaughter House Cases, 16 Wallace, U. S. Reports, 36.

Now we propose to test this law in the first place upon these principles and see how it stands.

We insist that this law was passed for and is intended to promote a mere *private enterprise*, and has nothing of a public character in it whatever. And that it is not in the power of the Legislature of any State, under the clause of the Constitution above cited, to take a man's property from him for the benefit of an individual to promote a mere private enterprise, nor to compel a man to pay for assisting in improving the value of his neighbor's property; nor is there any power in that body to compel a man to cultivate his own property in a particular way under the pretext of promoting his personal interest. Neither can the State invest any machinery or create any tribunal that will enable it to do this.

Now when we come to examine this law we submit that it violates all the rights of the individual in reference to his property; it takes it away from him practically and gives it to another without his consent and without even the ordinary forms of law, and without any compensation. We submit that it is an invasion of the ordinary proprietary rights of the land owner; and it gives him no discretion whatever. The law compels him, upon the application of these five lot owners, to assist in the drainage of the land, no matter whether they will be benefited to the value of one dollar; nay, though they may be positively damaged. The land owner may understand and insist that if he attempts to change the crops upon the land the frost may destroy them or the soil may be such that nothing will grow. It avails nothing under the machinery brought into operation by this act; he must contribute to the pretended improvement or his land will be confiscated by this pretended tribunal which the Legislature has created for the alleged purpose of adjusting his rights in the matter. It is obvious that throughout this whole proceeding this matter has been considered as a mere private enterprise, intended for the benefit of the *land owner alone*, who makes the application for the commissioners and who by this pretended process of law is seeking to compel the adjacent land owner to assist in improving his property. And it is treated, in fact, throughout as a mere private enterprise and is at last pronounced unconstitutional and void for that very reason, as we shall presently see, and is only upheld for a reason which, under the clause of the Constitution now under consideration, is wholly untenable Prof. Cook, in his report to which we have referred, page 164, says: "If properly drained they will make the richest lands in the neighborhood," showing that his idea was that it would only enrich the land for the benefit of the owner. Justice Scudder, in his opinion contained in the Record, page 239, treats it solely as a matter of private enterprise. Speaking of this land, he says there is evidence to show that a large portion of the land, formerly of Mary V.

Wurts, deceased, which has been assessed is higher than the other lands included in the assessment, and that its value is not increased by the drainage," etc. And he goes on to show by the evidence of Prof. Cook that it was possible to benefit the separate tract of land for the good of the individual's land, etc. The whole opinion shows that it was a proceeding wholly for the benefit of private individuals.

The evidence of Prof. Cook, who was called by the commissioners, proves the same thing. His testimony will be found on page 176 of the Record. He says, in reference to the effect of the drainage and how long it would take to become manifest upon people's lands along the Pequest, that it would depend upon how they make use of it by means of drains and every opportunity for the water to seek the Pequest. If no drains are cut, he says, it might take eight or ten years for the lands farthest off to receive any benefit. The most, he says, that the system of drainage, which had been carried out, pretended to do was to make it possible for the owners of the land to benefit their land by means of ditches to the Pequest, dug by themselves through their lands; each man must look out for himself and take care of his own land and improve it by ditching. See Record, page 176 and 177.

He does not pretend in all his evidence, indeed, there is not the slightest pretense in the case, that the drainage will be of any public benefit—not the slighest pretense in any way. It is nothing then but a mere private scheme.

The Supreme Court of New Jersey has been called upon to decide upon this act, and the Court will see that the *Supreme Court* has not, in reality, decided upon the true character of *this act* in any of their decisions, but have only dealt in generalities until the case reached the Court of Errors and Appeals in the last resort, and then the *true character* of *this act* was made manifest and its true character given, and that Court in its decision, which will be hereafter given in full, overthrows every one of the decisions of the Supreme Court so far as they apply to the con-

stitutionality of the law, and so far as they refer to it as a law tending to promote the health or the public prosperity.

The act was first passed upon by three Justices of the Supreme Court—Justices Bedle, Dalrymple and VanSyckle. The case is reported under the name of Lower Chatham and Little Falls, in the county of Passaic, etc., 6 Vroom's Reports, 497.

The opinion was delivered by Justice Bedle. The opinion, all the way through, admits the doubtful constitutionality of the law; insists that the assessment for benefits must *not* exceed the benefits, and holds that there is a queston of doubt upon that point, but resolves the doubt in favor of the law, and it holds that it is for public purposes "because there is no real difference between this case and that of a public highway." This is the ground, in substance, upon which the Supreme Court holds the law to be for *public* purposes. The Court will see how the Court of Errors and Appeals deals with this idea.

The next time it came before the Supreme Court was in the case of Mary V. Wurts and the Crane Iron Company, reported in 6 Vroom's Reports, 433.

The assessment there had been made, as before stated, under the supplement. The assessment was set aside because the supplement was considered unconstitutional. The case was decided by Justices Depue, Scudder and VanSyckle. Justice Scudder delivered the opinion. We quote so much of his opinion as will enable the Court to understand the view at *this time* taken of the law and the ground upon which it was upheld by this decision. The Justice says:

"The act of March 8, 1871, provides for the drainage of "lands subject to overflow from freshets or which are us- "ually in a low, marshy, boggy or wet condition, exclusive "of salt marshes or lands flowed by tide waters. That the "Legislature have the power to enforce the improvements "of such lands, not for the *advantages* of the *owners only* "but for *sanitary* ends and for the public good in adding "to the area of tillable and productive lands, is well es-

"tablished. Special assessments for drains, levees and "culverts by which large tracts of lands are protected from "overflow and relieved from excessive moisture have been "frequently authorized by legislation in this country and "elsewhere."

Now this Court will see that the Supreme Court gives entirely different reasons why *a law* similar to the one they describe in their different opinions should be upheld, but they do not investigate *this law* to see whether it has in it one feature of the character of the laws they describe as legal, and therefore they give different reasons each time for upholding this law, but these reasons have no applicability to it for the reason that the land to be drained under this law will not subserve either of the *public* purposes mentioned in their different opinions.

There is one more opinion of the Supreme Court, and that is contained in the Record, that was delivered *after* the decision of the Court of Errors and Appeals, to which we shall now refer, and the Court will see how utterly all former grounds are abandoned, and it is put upon the ground that the proceedings are by usage and by the *consent* of the *land owners*. Hardly applicable to this case. Now let us see the opinion of the Court of Errors and Appeals in the last resort on this law. All the decisions of the Supreme Court, except the one just quoted, came under review before the Court.

It is reported under the name of Hoagland, et al., commissioners, plaintiffs in error vs. Mary V. Wurts, defendant in error, in 12 Vroom's Reports, page 175. We cite the opinion in full:

Beasley, Chief Justice:—This litigation has been occasioned by proceedings taken under the act of the Legislature entitled "An act to provide for the drainage of lands," approved March 8, 1871, and its supplement, approved March 19, 1873. Rev., pp. 662, 665. The papers in the case show that, by force of these laws, an application was made by the requisite number of the owners of meadows situated on the Pequest river, in Warren and

Sussex counties, to the managers of the Geological survey, who, having adopted a system of drainage, made a report to the Supreme Court, and thereupon three commissioners were appointed to carry into execution the projected improvement. By one of the provisions of this original act, these commissioners were empowered, in order to raise the funds necessary to defray the cost of the enterprise, to issue their official bonds, pledging as a security the future assessments of the expense that the law authorized them to impose on the land owners. This step having been taken, and finding it difficult to dispose of such obligations, the supplement above mentioned was passed, the second section of which is as follows, viz.: "That if the said commissioners, after having commenced the drainage of any such tract, and proceeded therewith, shall, before the drainage of the same shall be completed, be compelled to suspend the completion thereof, from any inability at that time to raise the money required therefor, they shall proceed to ascertain the tracts of land benefited, or intended to be benefited, by said drainage, and the relative proportions in which the said respective tracts have been or will be benefited thereby, and also the expenses already incurred in such drainage, and, as near as may be, the additional expenses required for the completion thereof, which expenses they shall assess on the respective tracts of land in the proportions aforesaid," etc.

It will be observed that, by this clause, the commissioners are authorized to lay prospective assessments for anticipated benefits, and the assessment now brought before the Court by this writ of error has been in that fashion. In the Supreme Court it was held that the radical defect of this plan was that, by its operation, the land owner might be made to pay for benefits that might never be realized.

But, on the argument before this Court, the broad ground was taken that the whole system for draining lands was illegal and void. The position assumed was that the Legislature could not authorize this kind of improvement

to be made at the expense, in part, of a land owner who did not agree to the enterprise.

If the law in question were defensible alone on the ground that it is an emanation of the legislative power in its ordinary exercise, I should be constrained to yield my assent to this contention. There is nothing that I know of in the nature of legislation that could stand as a warrant for such an enactment. To make this evident, all we have to do is to realize fully the character of the authority thus assumed. The purpose of the law is to enable one set of land owners to compel another set to co-operate, against their will, to drain that body of meadow land in which they have separate interests. The persons thus coerced manifestly suffer an invasion of their ordinary proprietary rights. Why should they thus be forced either to improve their own land or help to improve the land of others? It cannot reasonably be contended that this burthen must be borne because the improvement is a public one. This was the view of the effect of this act expressed in the case of *Matter of Drainage*, etc., 6 *Vroom* 497; but as such view was founded on the notion that a legislative requisition that private lands should be drained at the expense of their owners, was an exercise of power similar in kind to a proceeding to condemn private property for the uses of a public road, I am compelled to think that decision rests upon a basis that is manifestly indefensible. I can see no rational ground for the assumption that the schemes to be executed by this act are, in the main, matters which, in any just sense, can be said to be of public concern. It is true that, under certain conditions, the reclamation of very extensive tracts of land, which are subject to overflows by the tides, or which are otherwise submerged, may assume the importance of a public undertaking. Such was the case presented in the litigation between the *Tide-Water Company* and *Coster*, 3 *C. E. Green* 519. Such would be the case if the condition of a tract of land was such as to be detrimental to the public health. But the law is not confined to such cases as these,

for its scope embraces every case of a tract of meadows, no matter how small its area, which is distributed among as many as five separate owners. It is extremely plain, therefore, that the legislative purpose embodied in this act cannot be vindicated on the plea that it directly conduces to the general welfare of the community. It does not seem open to question that it is the owners alone who are interested in the compulsory improvement of these lands. True, in such case, there is a resulting gain to the public, but this is nothing more than the inevitable incident of individual prosperity; the effect of drainage is to cause a more plentiful product than the land would yield in its unreclaimed condition; in this result, the owner is directly interested, the community indirectly only, and it is a perversion of legal terms to call the enterprise, on account of such collatteral advantage, a public one. So false is such a contention, that, if yielded to, it would legalize the compulsory establishment of manufactories, or the converting of forests into arable land, or the execution of any private enterprise whatever, as, in all such matters, the state has a remote interest. To call the legislative *fiat* that a half dozen persons shall drain their land at their joint expense and for their private advantage, an exercise of the taxing power of the state, is, in my judgment, simply a misnomer. Nor is such an exersise of power any more justifiable, if it is to be derived merely from the nature of the legislative authority, than would be an enactment commanding A and B to farm their several lands at their joint expense; and yet no one will pretend that this can be done. Under a constitution that guarantees the inviolability of private property, and limits the law making power to the function of legislation, it appears to me entirely inadmissible to claim that it is a legitimate use of the prerogative to legislate, to enact a law, such as the present one, requiring a few land owners to improve their lands for their own profit, and at their own expense. I regard it as a clear infringement of the constitution, to take, by force of a statute, the money of a person from him, even though such money

should, against his will, be used for his private benefit, in the improvement of his land. Such an act has nothing in common, with respect to legal principles, with the condemnation of property for the uses of the community, and to the charging, to a limited extent, of the costs of such improvement upon the land owners specially benefited. I cannot assent to the hypothesis that this law can rest on the state's right to tax, or on its eminent domain.

But, nevertheless, I think this act, with respect to its general scope and operation, is to be vindicated. The right to appoint methods for the draining of meadows has been a branch of legislation that has existed in this state from the earliest times, and has been so frequently exercised and acknowledged, that it has become a part of the local common law. The general act upon this subject, that stands unaltered in the late revision, was enacted at as distant a date as the year 1788, and there is a supplement to it, passed in 1800; and from that time to the present, a vast amount of such legislation can be found by turning to the volumes containing our annual statutes. None of such laws have ever been successfuly challenged; but, on the contrary, some of them have been accredited by judicial sanction. In this state of affairs it seems to me quite too late to revert to first principles in order to overthrow a system of procedure which is possessed of such antiquity, and has to its credit so many recognitions. I therefore am satisfied that this law, with respect to its general form and purpose, is an act of legitimate legislation.

In view of this result, the only question to be decided is, whether the plan adopted for carrying out this purpose is, in all respects, equally legitimate. It was urged as an objection to such plan, that the expenses were authorized to be imposed on the different parcels of land embraced in the area of the project, without limiting the burthen severally imposed by the extent of the benefits severally received, and it was claimed that this was a violation of the rule settled by this court in the Agens case. But I

think that rule has no application in this instance. No one can read these various acts relating to the draining of lands and not see at once that they constitute a class standing by itself. Such acts, I have said, relate to private improvements, and the rule referred to applies to public improvements. In the one case there is a public benefit as well as a private benefit proceeding directly from the execution of the project, and therefore the benefits are required to be paid for in part by the particular land owners, and in part by the community. But, in this other case, there is but a private benefit solely, and none of it is therefore chargeable to the public. The consequence is that, in these proceedings to drain meadows, a different rule than that established by the Agens case has been adopted, so that, to require such proceedings to harmonize with the principle of that decision, would be to illegalize the whole series of laws that have been enacted on this subject. That principle is, in my opinion, altogether inapposite in this case.

But while this particular method of distributing the expenses of the enterprise is deemed inappropriate, there are certain other methods that have always prevailed, and which seem to be essential to the system, if its identity is to be preserved. Those methods were to have the land comprehended in the scheme measured and valued, and assessed ratably upon that basis, or, after the doing of the work, have the expenses apportioned equitably by the judgment of impartial persons. The plan now objected to, and which was purused in this case, is to allot the respective quotas in advance of the doing of the work, adjusting them by an estimation of anticipated benefits. This is certainly a wide deviation from the practice heretofore pursued. The entire system must rest on the foundation of inveterate usuge, and from its nature, therefore, it is not susceptible of essential modifications. The old custom appears to have been to put these schemes for draining lands, for the most part, in the hands of the parties interested; such a power was not likely to be abused, as the

check of self-interest would naturally keep it within reasonable bounds; the present act transfers the institution and execution of the undertaking to strangers, who without risk of loss to themselves, can carry into effect such notions about draining the land of other people as they may chance to entertain, and which notions may be as ruinous, when put in practice, as they were magnificent in design. Such a power is so great, and so liable to perversion, and so utterly subversive of the right of the land owner to manage his own property, that it was not without difficulty that I was led to believe that such an authority could be granted in this State. But there are a number of ancient precedents to this effect, and so I think this law, in its general methods, must be sustained. But when it undertakes, as it does, to substitute, in allotting expenses, a judgment of valuers founded on speculation, in the place of assessment founded on facts, or by a fixed standard, it seems to me that such a procedure is a substantial departure from ancient usuage, and on that account cannot be sanctioned. I think the judgment should be affirmed.

Now this opinion reviews *this act* and scouts the idea that it is any more than a mere private enterprise, and overthrows completely the opinions of the Supreme Court. It denounces the whole law as unconstitutional and void, and only pretends to uphold it on the ground of "local common law," which we shall see presently is wholly untenable.

We have then by the highest Court in the State the decision that this law was intended to uphold a mere *private enterprise*, and that the Legislature had no right to condemn the plaintiff's land for that purpose, and that the act therefore undertakes to take plaintiff's property without due process of law within the meaning of the article of the Constitution above cited.

But let us go farther and test this law, and the means which it employs to take a land owner's property away from him.

The Board of Managers of the Geological Survey, whose creation we have seen in the act of the Legislature cited, are authorized on the mere application of five owers of separate lots of land to examine any tract of land mentioned in the said act, and if *in their judgment* the tract should be improved, they shall make a report to the Supreme Court.

And it shall be the duty of that Court at the same or next stated term thereof, or as soon as conveniently can be done, upon reasonable notice given to that effect, *in a newspaper circulating* in the county where such tract of lowland is situated, to appoint *three* commissioners (not interested in the lands to be drained) to superintend and carry out the system of drainage which may thus have been adopted and reported by the said Board of Managers in reference to said particular tract or tracts, and these commissioners are to be paid five dollors per day, and they shall arrange the land to be assessed for benefits, and shall publish said report in some newspaper or newspapers circulating in the vicinity of said lands for the space of four weeks, at least once a week, in order that parties interested may file exceptions if they desired, and if any objections should be filed the Supreme Court should in a summary way make a rule or order directing the commissioners to distribute and assess the amount of said expense and interest upon the land contained within the territory, in proportion as nearly as they could judge to the benefit derived from said drainage, by the several parts of land to be assessed. If any objections are made to the assessment and distribution aforesaid, it is to be made before the commissioners, and they are to correct or confirm it as they see proper, and then file it. Four weeks are given to object to it before the Supreme Court, and if they are filed the Court shall hear and dispose of it in a summary way, *but they shall not* reverse said assessment, or any part thereof, except for some error in law, or in the principles of assessment made or committed by said commissioners.

Now this is the whole machinery employed in this im-

portant matter, and let us see what it is. The first notice of the survey to be given is a reasonable notice published in a paper printed in the county where the lands lie. No time is mentioned and it may be stuck into some obscure county newspaper. No provision whatever is made for notifying non resident owners, and the notice, so far as these non resident parties, the plaintiffs in error and Mrs. Mary V. Wurts, were concerned, was nothing—a nullity. They had no means of obtaining notice whatever, and had none. Then in the appointment of these commissioners these land owners had no voice whatever. It is an *exparte* application entirely, and men are to be appointed to impose upon parties a burden amounting to thousands upon thousands of dollars without having a single voice in their appointment—a violation of the very first principles of justice and of constitutional law. In the next place, no qualification is required of the commissioners, except that they shall not be interested in the lands to be drained. They may be taken from any place; any part of the State; they may be totally ignorant of and inexperienced in the business in which they are called to act; they may be men far past the ordinary period of life when men can do jury duty; they may be prejadiced and utterly unfit for their duty, and yet they are really the sole arbiters in the great questions to be submitted to them. The Court shall not reverse, except for error in law, or in the principles of assessment. The questions of fact, the amount of assessment, are all left with this irresponsible tribunal. Now this Honorable Court will see in the opinion of Mr. Justice Scudder, on page 239, how the Court followed this rule. They took the commissioners' judgment as paramount to all others. They brushed aside the evidence of witnesses as nothing, "and said this Court has "laid the rule to guide them in reviewing the acts of officers "appointed to make public improvements, and report "thereon is that their returns cannot be set aside upon the "testimony of others differing in judgment with them, un"less it should appear that their determination was so clear-

"ly wrong as to manifest some bias, partiality or fraud on "the part of the officers, or that it was procured by corrup- "tion or some undue means. If it were not so a party "objecting might appeal from the judgment of the officers "appointed for the purpose, to the opinions or caprices of "interested or irresponsible parties."

See Record 239 and 240.

How often, pray, could a party find evidence to bring themselves within this rule? But they are put wholly at the mercy of the commissioners.

And this Court can see, if they could read the evidence, how the plaintiffs in error suffered by this tribunal. They have been stripped of their property by the mistaken judgment, to say no more of these commissioners in whose appointment they had no part; commissioners too, who had an interest in collecting out of the assessment the sum of $4,357.80 for their fees as commissisoners who, when one hundred of the 130 land owners protested against these proceedings, went on in spite of this remonstrance.

Now we submit, is such a tribunal adapted to the peculiar ciscumstances of this case? Does it come within any of the rules laid down by the Court in the cases which we have cited? We submit not.

Of all the cases that could be imagined, cases like these are the most appropriate to be submitted to a jury. The 7th article of the amendments to the Constitution provides that in suits at common law, where the value in controversy exceeds $20, the right of trial by jury shall be preserved. And the 7th section of article 1 of the Constitution of New Jersey provides that the right of trial by jury shall remain inviolate, but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed $50, by a jury of six men. These show how jealous the framers of the Constitution were to preserve the sacred right of trial by jury.

In this matter all their safeguards have been broken down, and the sacred right of parties left to the judgment

of these utterly irresponsible persons, whom they had no voice in choosing. We submit that in this case the law is unconstitutional and void, because it does deprive and has deprived these parties of their property "without due process of law." And under the decisions quoted and the plain rules of the law, the proceedings are void.

It is void also for the other reason stated in the clause of the Constitution above quoted. It does not afford to the plaintiffs in error the equal protection of the law. This law only applies to a limited number of people. It takes the property of that number in the manner we have set forth, and takes their property without due process of law, as we have seen.

The only ground upon which the Chief Justice pretends to sustain this law, is that of a local common law arising from long usage. Not on the ground of its constitutionality at all, but because of long usage a kind of local common law has been established. I quote from his opinion already before the Court:

"But nevertheless I think this act with regard to its general scope and operation, is to be vindicated. The right to appoint methods for the draining of meadows, has been a branch of legislation that has existed in this State from the earliest times, and has been so frequently exercised and acknowledged that it has become a part of the local common law," etc. See opinions.

This is the language of the Chief Justice. This is the whole ground upon which he seeks to vindicate a law which he has just before pronounced unconstitutional and void.

How, we ask, can the fact that the Legislature of New Jersey has from time to time, no matter for how long a time, passed a series of unconstitutional laws on this given subject—if it ever did pass them, which we think it never did pass any law just like this one—override the plain constitutional rights of the plaintiffs in error? They were never parties to these enactments; they were never affected by them in any way, and they never gave any consent

to them. Can the fact that other unconstitutional laws stand on the statute book, if such there be there, justify the Court in upholding another unconstitutional law that the Legislature has seen fit to pass?

The plaintiffs in error are affected by *this* law, and they come at once before the Court and challenge it, and say that it is an infringement of their constitutional rights, that it takes away their property from them without due process of law, and denies them the equal protection of the law. Is it consistent for any tribunal to say why it is true that this law is an unconstitutional one, and is clearly void, but it is to be vindicated on the ground that many laws of a character similar to this have been passed, and nobody has found fault with them heretofore, and therefore it does not lie in your mouth to do it?

Does that compensate the plaintiffs in error for their lost property, and for their destroyed rights under the Constitution?

Suppose the Legislature had been from time to time passing a law that when a person was accused of a crime, it should not be necessary to have his case presented to a Grand Jury or tried by a Petit Jury, but that the Examining Court, if satisfied of his guilt of the crime with which he stood charged, should at once proceed to pass final judgment upon him, and the Legislature should pass a law specifying a particular crime and providing that if the Court should be satisfied of his guilt upon examination, it should proceed to pass final judgment upon him without observing his rights to be presented to a Grand Jury and tried by a Petit Jury, and the party when arraigned should challenge the constitutionality of the law, and say I am entitled to be tried by a different tribunal than this, and your judgment, if pronounced, will be void, because it is unconstitutional. Would it do for the Court to say why we admit the unconstiutionality of this law, and you ought not to be held under it, but so many laws of a similar character have been passed and nobody has challenged them, that it has become a part of the local common law of the

State to pursue this course, and in this respect the State has abrogated by long usage the Constitution of the United States, and we cannot allow you to take advantage of the objections you have so justly raised.

Would that answer avail for a moment before this Court? We submit not.

It would only be aggravating the wrongs the party had already suffered.

Well, this is the case before the Court. The Court below in the broadest terms admit that the law is unconstitutional, and it meets their decided condemnation, but because *other laws* have been passed in character somewhat similar to this, and have gone unchallenged, therefore *this* law must be sustained.

We submit that every law must stand upon its own constitutional merits. Remember *this law* has never before been challenged. *Now* it is challenged, and the Court say it is bad, but because there are other unconstitutional laws like it in the State, they will uphold this. Why, we submit, if a State can be tolerated in adopting a system of laws contravening the plain requirements of one or more parts of the Constitution, and then set up that it had been passing such laws so long that it had become a part of its local or common law, why cannot another State set up the same thing in reference to another part of the Constitution, and we will soon have no Constitution of the United States at all? This would be States Rights in its most extreme and dangerous form. We humbly submit the Chief Justice mistook the true character of the Legislature in New Jersey on this subject. All the acts, as the Court we think will find, refer to *Tide-Water Lands* to making embankments, ditches and employing other means to keep back the sea and to preserve health, and nearly all were by consent of the persons interested. It will not be necessary, in our view, to refer to them, because there is an easier way to solve the difficulty under which the Chief Justice labored. And we submit that no case in New Jersey has been decided that upholds a law similar to this.

We simply refer the Court to all the cases we have been able to find, in order to show that none of them applies to this case.

We refer to Doremus vs. Smith, 1 Southard, Rep. 142.

Tacy vs Bower, Pennington, Rep. 964.

Westcott vs. Garrison, et. al., 1 Halsted, Rep., 182.

State Wood Prosecutor vs. The Frank and Gembert Creek Co., 2 Green's Rep. 301.

Britton vs. Blake, 6 Vroom, 208, 7 do 442.

None of these decisions sustain the law in question nor approach to it.

But we submit that the clause of the Constitution was intended to meet, and does meet, just such michievous legislation as this. And as if the people had been injured enough by such legislation, they adopted and put in force this amendmet to the Constitution of the United State for the very purpose of protecting them against this very evil.

The fourteenth amendment to the Constitution of the United States went into effect and became binding on all the States on the 28th day of July, 1868.

The act under consideration was approved March 8, 1871. So it is subject to the fourteenth amendment of the Constitution.

Now, applying this Constitutional amendment to this law, we say it strikes it down and protects the right of the plaintiffs. It was intended, as this Court has so well said in the case to which we have already referred, as an additional safeguard against unwise and hasty legislation by the States, and it does preserve the rights of these plaintiffs in error against this act now under review, the evils of which the distinguished and learned Chief Justice of New Jersey has pointed out in such an able and logical manner. To use his language, this clause of the Constitution will keep within reasonable bounds, and will not permit, as this act "does, the transfer of the institution and "execution of the undertaking to strangers, who without "risk of loss to themselves can carry into effect such no-"tions about draining the land of other people as they

"may chance to entertain, and which notions may be as "ruinous when put in practice as they were magnificent "in design. Such a power is so great, he adds, and so lia- "ble to perversion, and so utterly subversive of the rights "of the land owners to manage his own property, that it "was not without difficulty that I was led to believe that "such an authority existed in this State." Permit me to say that the learned Chief Justice has in the most graphic language described the evils of this law, and the conduct of the commissioners under it. But, he adds, there are a number of ancient precedents to this effect, etc., and so he thinks the law must be sustained. Well now, if ever there were such obnoxious laws, the very object of this amendment was to cut them off, and does most effectually do it, and all the fears and anxieties of this able jurist are allayed by it. And its object was further to prevent the State Legislatures from undertaking to delegate the authority which peculiarly belongs to it, to decide when the property of an individual shall be taken away from him to an irresponsible body of men, as they have done in this case. And we may add that very recently the Courts of New Jersey have had another drainage act before them, and have almost adopted the language of the Chief Justice, and have declared it void. See Kean vs. Driggs, Drainage Co., 16 Vroom, Rep. 98.

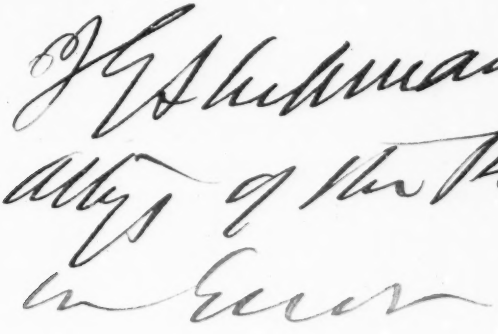
We submit that this act is void, and that the judgments and proceedings should be set aside and that the plaintiffs should be restored in all things.

There is nothing in the decisions to restrain this Court from putting the proper construction upon *this act*, to ascertain whether *this* act now before the Court violates the sacred rights of these plaintiffs. The Court will deal with case this just as they did with the case of New Jersey vs. Yard, Reports in 95 U. S. Rep., 104.

There certainly is nothing in the decisions of the New Jersey Courts to prevent this Court from expressing its opinion upon the statute under review. I refer to Bergess vs. Silegman and cases in note 1, 107 U. S. Rep., page 34.

I do not think it is necessary to discuss this, as there is nothing to bind this Court at all, or to control its action in any way.

We have not printed the record in the case of the Crane Iron Co. vs. the same defendants in error, because it stands in all respects upon the same grounds that the present case does, and must be governed by it and by an understanding between the counsel of the respective parties it is to be governed by the judgment of the Court in this case.



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# Supreme Court of the United States.

## OCTOBER TERM, 1884.

CHARLES STUART WURTS and ROBERT LENOX KENNEDY, Plaintiffs in Error, *vs.* AMOS HOAGLAND, JAMES BOYD, and WILLIAM L. JOHNSON, Commissioners, &c., } No. 193.

and

THE CRANE IRON COMPANY, Plaintiff in Error, *vs.* AMOS HOAGLAND ET AL., Commissioners, &c. } No. 192.

BRIEF FOR DEFENDANTS IN ERROR.

"Banner" Steam Print, Morristown, N. J.

# United States Supreme Court.

CHARLES STUART WURTS AND ROBERT L. KENNEDY, EXECUTORS, &c.
Pl'ffs in Error.

*and*

AMOS HOAGLAND AND OTHERS, COMMISSIONERS.
Def'ts in Error.

*In Error to Supreme Court of New Jersey.*

## STATE OF THE CASE ON PART OF DEFENDANTS.

On the 8th of March, 1871, the Legislature of New Jersey passed an Act entitled "An Act to provide for the drainage of lands." By a written application signed by seventeen of the owners of separate tracts in what are known as "The Great Meadows," which contain over five thousand acres of land; dated also on the 8th of March, 1871, the Board of Managers of the Geological Survey of the State were requested to examine said meadows and to decide upon and adopt a system for their drainage.

P. 221 of the record.

The Board having made the examination and adopted a system of drainage, applied to the Supreme Court for the appointment of Commissioners to superintend the drainage, of which application notice was published as required by the law. No one objecting the appointment was made on the 15th of November, 1872.

Record, p. 223, &c.

March 19th, 1874, a Supplement to the drainage act was passed which gave rise to much litigation, which, however, in no way affects the present case. An assessment in anticipation of the cost of the work was made, which is mentioned in the Brief of the Counsel of the Plaintiffs. All the facts mentioned by him from line 17 on page 13 of his brief, to line 34 on p. 18, refer to the litigation under that Supplement, which was declared unconstitutional.

These facts (whether correctly stated or not, I do not

know), do not appear on the record, and can have no bearing on the case before the Court.

The Commissioners having proceeded with their work, under the original law, pending the controversy as to the validity of the Supplement, and having completed the same, made their report of its cost, and of the lands benefitted, May 17th, 1879.

Record, p. 9—14.

Repeated in part page 226.

June 23d, 1879, no objections to their report having been filed the Commissioners were directed by the Court to distribute and assess the cost on the lands described in the report according to the benefit received by each tract.

Record, p. 229.

That assessment was made and was filed in the Supreme Court, September 8, 1879.

Record, p. 14.

To that assessment exceptions were filed by the plaintiffs and others, which were sustained in part, and the matter again referred to the Commissioners for correction, December 1st, 1880.

Record, pages 1–9.

Opinion of Justice Scudder, p. 236–242.

Order, page 243.

An amended assessment was subsequently filed and confirmed. The cause was taken by the plaintiffs to the Court of Errors, and on the 19th July, 1881, the judgment of the Supreme Court was affirmed, no written opinion being delivered.

Record, p. 242.

This is the judgment brought up for review by these writs of error, and this Court is asked to reverse it, so far as the plaintiffs in error are concerned, for the reasons as stated in the assignment of errors, that the law under which the proceedings were had is contrary to natural justice, and in violation of both the State and Federal Constitutions.

*This law* has received the consideration of the State

Supreme Court three times, and of the Court of Errors twice, reported

6 Vroom 498,
10 Vroom 433. Matter of Pequest Draining.
12 " 176,
13 " 553,
14 " 456,

and in each case the law was sustained and declared to be within the Constitution of the State.

In delivering the opinion of the Court of Errors in 12 Vroom 176, the Chief Justice said: "The general act on this subject that stands unaltered in the late revision, was enacted at as distant a date as the year 1788, and there is a supplement passed in 1800, and from that time to the present a vast amount of such legislation can be found by turning to the volumes containing our annual statutes. *None of such laws have ever been successfully challenged*, but on the contrary some of them have been accredited by judicial sanction."

In Coster *v.* Tide Water Co., 3 C. E. Green 69, the Chancellor held the law then under consideration to be unconstitutional, but clearly affirmed the constitutionality of laws like the present, and declared that the prescribing of public regulations for draining wet lands was a branch of legislative power exercised by the State before as well as since the Revolution, and before as well as since the adoption of the present constitution, and that the power to pass such laws was not different from that which justified legislative regulations for the building of party walls, making and maintaining partition fences, &c.

A similar law was also sustained in Brittin *v.* Blake, 6 Vroom 209, and by the Court of Errors, 7 Vroom 447.

And it is hardly too much to say that similar laws are to be found in almost every State of the Union.

I shall not therefore trespass on the forbearance of the

Court by an argument in vindication of the law from either the charge that it is against natural justice or repugnant to the Constitution of the State of New Jersey, but will rest the case on the part of the defendants on three propositions which I am confident cannot be successfully challenged.

I.

In the enactment of laws to promote local improvements such as are contemplated by this drainage act, the Legislature is sovereign, except so far as their power is limited by the Constitution, and such laws when within the Constitution of the State are not subject to judicial review, either as to their policy or the means by which they are to be carried into operation.

The police power, the power of taxation, and the right of eminent domain are all attributes of the sovereign power, which in our form of government inheres in the people, and therefore in the legislature as their representatives. And being incidents of sovereignty they must be absolute and unlimited, except by the provisions of this Constitution.

Potter's Dwarris on Statutes, p. 414, 415.
Cooley's Const. Limitations, p. 574.
Mills on Eminent Domain, Sec. 11, 240.
Sedgwick on Const. of Stat., 605.
Howell *v.* Essex Co. Road Board, &c., 5 Stew. 674.

For the Judiciary, therefore to impose restrictions or limitations on the exercise of either of these great governmental powers where none are imposed by the Constitution or to nullify or refuse to execute a law originating in either of them, or designed to put either of them in operation, because of its alleged injustice or lack of wisdom or for any cause except that it violates the Constitution, would be a species of judicial legislation and a substantial subversion of the Constitution by making the Judicial superior to the Legislative power.

Whether, therefore, this drainage act is referable to the

exercise by the Legislature of the police power, power of taxation or of eminent domain, to each of which such laws have been attributed, and to one of which it is admitted to pertain, is entirely immaterial for the decision of the present case.

The Courts of New Jersey have uniformly and repeatedly recognized this limitation upon their power.

In Glover v. Powell, 2 Stock R. 212, the rule was applied by the Chancellor to sustain a law which authorized the obstruction of a navigable stream and he said, "the legislature must *be the sole judge and arbiter* for the public in this matter, *and Courts have no right to question its authority.*"

In the State v. City of Newark, 3 Dutch 195, the Supreme Court said: "The Constitution of the State has im-"posed no limits on this power, (*i. e.* of taxation for local "improvement or governmental support) except that it can "only be exercised as a legislative power."

The case before the Court was an assessment by the City of Newark under its charter, for the cost of altering and widening a street, upon the persons benefited by the improvement.

The State, Sigler Pros. v. Fuller, Collector, 5 Vroom, 277, was also an assessment for the improvement of the streets and sidewalks in the County of Essex, upon the persons benefited. It was insisted that the law was unconstitutional because it authorized private property to be taken for public use without compensation being made.

The Court said that "the power to assess for such im-"provements is a part of the great legislative prerogative of "taxation," * * and that the power "should *exist in the* "*discretion of the Legislature without the interference of the* "*Courts*," "unless some radical principle is violated or the guarantees of the Constitution are disturbed under color of its exercise," and that an assessment of the expense of such local improvements on the persons benefited was not in violation of the Constitutional clause against taking private property without just compensation.

Again in the State ex rel. Doyle v. City of Newark, 5 Vroom 243, the same Court declared it could not refuse to give effect to a similar law, even if in its judgment it was against public policy and said *that the Legislature are the sole judges of the policy of the act.*

The decisions of this Court with no less emphasis declare the exclusive power of the State Legislature over the whole subject of local improvements, and that when a State law has been decided by the State Courts to be within the State Constitution this Court has no power to reverse that decision on Writ of Error.

Nor has it power to grant relief against the injustice of a State law, however manifest such injustice may be.

In Providence Bank v. Billings, 4 Peters 562, Chief Justice Marshall said, "This vital power (of taxation) may be "abused, but the interest, wisdom and justice of the repre- "sentative body and its relations to its constituents furnish "the only security against unjust and excessive taxation "as well as against unwisely legislation."

McCulloch v. Maryland, 4 Wheat 428, was the case of a special assessment for a local object and the law was regarded as an exercise of the taxing power and therefore to be *exclusively* in the discretion of the State Legislature, and if such discretion were ever so unwisely exercised the courts could afford no relief.

In City of New York v. Miln, 11 Peters 102, it was decided that "A State has the same undeniable and unlimited "jurisdiction over all persons and things within its terri- "torial limits as any foreign nation where that jurisdiction "is not surrendered or restrained by the Constitution of "the United States." "*That all these powers which relate* "*to merely municipal legislation, or what may perhaps be called* "*internal police are not thus surrendered or restrained, and* "*that consequently in relation to these the authority of a State* "*is complete, unqualified and exclusive.*"

The language of Justice Daniel delivering the opinion of

the Court in Withers v. Buckley, 20 Howard 84, on error to the Court of Errors of Mississippi, is if possible even stronger. He said that in such case this Court under the 25th section of the Judiciary act has no jurisdiction if the question is whether a State law is in opposition to the Constitution of the State, and therefore where it is alleged that the Constitution of a State provides that private property shall not be taken for public use, and that the highest Court of the State has sustained the validity of a law which violates this Constitutional provision *the Court has no power to reverse that decision.*

Recently the question arose in the city of Mobile v. Kimball, 102, U. S. Rep. 704, in which the Court said, "It may "be that the act imposing on the County of Mobile the en- "tire burden of improving the river and bay etc., is harsh "andoppressive, etc. But this Court is not the harbour in "which the people of a city or county can find a refuge from "ill advised, unequal and oppressive State legislation. *The "Judicial power of the Federal Government can be invoked "only when some right under the Constitution, laws or treaties "of the United States is invaded. In all other cases the only re- "medy for the evils complained of rests with the people and "must be obtained through a change of their representatives.*

Again in Hagar *v.* Reclamation District, &c., 111 U. S. Rep. 701, a case in its features much like the present one, the Court said: "There being no Federal question touch- "ing these matters we follow the decisions of the State "tribunals as to the construction of the statute. It is not "open to doubt that it is in the power of a State to require "local improvements to be made which are essential to the "health and prosperity of any community within its "bounds, and to this end it may provide for the construc- "tion of canals, for draining marshes and malarial dis- "tricts, and of levees to prevent inundations, as well as "for the opening of streets in cities and roads in the "country, &c.

"Whenever a local improvement is authorized it is for "the legislature to prescribe the way in which the

"means to meet its cost shall be raised, whether by gen-
"eral taxation or by laying the burden upon the district
"specially benefited by the expenditure."

Can I then be mistaken in saying that every feature of the law under consideration is found in this decision, and has been sustained by the Court as exclusively within the legislative power of the State unless it can be shown to be repugnant to some provision of the Federal Constitution?

II.

Wherever this Court is called on to construe a State law or adjudicate as to its consistency with a State Constitution, in a case involving no peculiar Federal question, it uniformly follows the decisions of the State Courts.

This rule has been so frequently enunciated as hardly to justify even a reference to the cases. In addition to those already cited, however, I refer to

McBride *v.* Hoey, 11 Pet. 167.
Robertson *v.* Coulter, 16 How. 106.
Ins. Comp. *v.* The Treasurer, 11 Wall. 204.
Rector *v.* Ashley, 6 Wall. 142.
Town of South Ottoway *v.* Perkins, 4 Otto. 26.

In the last cited case Justice Bradley said: "This "Court has always held that the laws of the States are to "receive their authoritative construction from the State "Courts except where the Federal Constitution and laws "are concerned. And the State Constitutions in like man-"ner are to be construed as the State Court construe them. "This *has been so often laid down as the proper rule, and is "in itself so obviously correct that it is unnecessary to refer "to authorities.*"

The rule was also recognized in the recent case heretofore cited of Hagar *v.* Reclamation District, &c., 111 U. S. 701, Rep. a case as I have said notedly like the present.

The application of this rule to these cases effectually dis-

poses of them unless the record shows that this law in some way conflicts with the Federal Constitution or laws.

III.

This drainage law is not in conflict with any provision of the Federal Constitution, and it is not claimed to be in opposition to any law of Congress.

The allegation is that it violates the 5th Amendment of the Constitution which prohibits the appropriation of land for public use without compensation, and also that clause of the Constitution which forbids any State from passing a law which impairs the obligation of any contract.

(A.) The prohibition against taking private property for public use without compensation, whether in the State or Federal Constitutions, has reference only to an appropriation under the right of eminent domain, and has no reference to property taken under either the police or taxing power.

Cooley on Const. Lim. 620.

If therefore this law emanates from either of those powers, and not from the right of eminent domain, this Constitutional restriction does not apply to it.

But if the law should be admitted to be an exercise of the right of eminent domain, and to authorize a taking of the plaintiff's property for public use, without providing any compensation therefore, while the admission would show the law to be a violation of the Constitution of New Jersey, it would not make it repugnant to the Federal Constitution.

This Court has repeatedly and uniformly declared that the amendments to the Constitution were intended only as limitations of the power of the general Government and were not intended to apply to the legislatures of the States.

The precise question arose in Barrow *v.* The City of

Baltimore, 7 Peters 243, in which one of the errors relied on was that the State Court sustained the action of the defendant under a State law, whereby the property of the plaintiff was taken for public use without compensation, in violation of this 5th Amendment.

Chief Justice Marshall delivering the opinion of the Court, said: "The 5th Amendment to the Constitution "must be understood as restraining the power of the Gen- "eral Government, not as applicable to the States. In "their several Constitutions they have imposed such re- "strictions on their respective governments as their own "wisdom suggested; such as they deemed most proper for "themselves. It is a subject on which they judge exclu- "sively, and with which others interfere no further than "they are supposed to have a common interest."

"The provision in the 5th Amendment to the Constitu- "tion declaring private property shall not be taken for "public use without compensation is intended solely "as a limitation on the exercise of power by the Govern- "ment of the United States, *and is not* applicable to the "legislatures of the States."

That decision has never been modified, but has been uniformly followed in subsequen cases as will be seen by reference to

Lessee of Livingston *v.* Moore, 7 Peters, 551.
Fox *v.* Ohio, 5 How. 434.
Smith *v.* Maryland, 18 How. 76.
Withers *v.* Buckley, 20 How. 90.
Pervear *v.* Commonwealth, 5 Wall, 479.
Mitchell *v.* same, 7 Wall, 321.

In Withers *v.* Buckley *supra* the court seemed disposed by its clear and emphatic enunciation of the rule to preclude any further discussion and said, "The amendments were designed to be modifications of the power vested in "the Federal Government *and their language is susceptible of* "*no other natural, literal or verbal acceptation.* In this ac- "ceptation this court has repeatedly and uniformly ex-

"pounded these amendments in case having reference to "retro-active statutes, *to the right of eminent domain and to "the execution of plans for internal improvements in opposi-"tion to which this clause has been urged.*"

While in Mitchell *v.* Commonwealth Chief Justice Chase advanced one step further and declared that "the scope "*and appreciation of those amendments are no longer sub-"jects of discussion here.*"

(B). There is nothing in the law itself or in the record of the proceedings under it in the State Court which can sustain the allegation that the law impairs the obligation of any contract and therefore violates the 5th amendment of the Federal Constitution.

It is true that there is manifested in the law a clear legislative intention to make the lien of the assessment for the expense incurred in the drainage a paramount lien on the lands thereby benefited, but that is an incident to, and the necessary result of the exercise of the great governmental power which underlies the law, and of which it is but the legislative expression -- the theory of all such assessments being that the owner of the lands and the holder of any lien on it are not thereby injured, but receive full compensation for their apparent damage by the benefit to the land.

Wynhamer *v.* The People, 13 N. Y., 464.
People ex. rel., Griffin *v.* The Mayor, 4 N. Y., 418.
Potter's Dwarris on Stat., 383, 403.
Cooley on Const. Lim. 620.

That the power of the Legislature to make such assessments paramount liens is fully recognized by the Courts of New Jersey is beyond controversy.

Hopper vs. Ex'rs of Malleson et. al. 1 C. E. Green, 386.
Trustees of Pub. Schools v. Trenton, 3 Stew., 679.
Patterson v. O'Neil, 5 Stew., 386.
Howell v. Essex County Road Board, 5 Stew., 674.

Besides, all contracts made by or with the plaintiff's in error in relation to the lands affected by the assessment

lien, if made before March 8, 1871, (the time when the law was passed), were made with reference to the law, while such as were made before that date were made in contemplation of the possible exercise, in the future, of the governmental powers from which the law emanated. These powers enter into every contract obligation and consequently any legislation which is but the putting the power into practical operation cannot impair such obligation.

Railroad Company v. McClure, 10 Wall., 511.
Bethel v. Demarest, 10 Wall., 537.
Green v. Barry, 15 Wall., 610.
Sedgwick on Cons. of Stat., 605 and note (a.)

But the defendants are relieved from the necessity of invoking the protection of either of the well settled principles I have stated, because the closest scrutiny of the record will fail to discover evidence of the existence of any contract relating to the plaintiff's lands out of which any obligation in their favor could arise, which has been, or can be, by possibility impaired by the law under consideration, or any proceedings under it.

(C.) Nor is this law amenable to the charge of violating the 14th Amendment to the Constitution which prohibits the States from depriving "any person of his property without due process of law."

That amendment only applied to the States a provision which is as old as *magna charta*, and had long before been embodied in the 5th Amendment.

It has been repeatedly held that it was intended to exclude the exercise of arbitrary power, condemning the citizen, or depriving him of his property unheard, or without an opportunity of being heard, and having his rights settled by some tribunal established by law.

It was never understood, nor has it ever been held to prohibit the legislature from altering the common law, or common law proceedings, or to prevent the enactment of

such special laws as involve the exercise of the taxing power, or power of eminent domain, or police power, or provide for local improvements.

The same provision is found in the Constitutions of most of the States, and yet it may be confidently said, that in every State laws exist similar in character to the one now challenged, and have repeatedly been declared to be valid.

Not a single case has Counsel for the plaintiffs found which sustains his position. On the contrary the cases cited by him fully and unequivocally affirm the validity of laws closely resembling the one under consideration.

Nor is it necessary that the rights of the parties shall be decided by a common law jury, or by any jury. "The "wants of the public stimulated by the progressive spirit of "the age upon the one hand, and the obstructions which "a spirit of avarice by individuals, interposed upon the "other, rendered such a restriction impracticable." It therefore became necessary to constitute particular tribunals for the adjustment of such controversies, bringing the parties to submit themselves to the exercise of more summary remedies in this regard.

Potter's Dwarris on Statutes, &c., p. 399.
Cooley on Const. Lim., Chap. XI, p. 355, &c.

The decisions of this Court are in accord with this declaration.

In Walker v. Savinet, 92 U. S. 90, the Court said: "Due "process of law is process according to the law of the land. "This process in the States is regulated by the law of the "State."

In Davison v. New Orleans, 92 U. S. p., which was a case of drainage of swamp lands under a State law, and strikingly like the present case in some of its features, Justice Bradly said: "In judging what is 'due process of law,' respect "must be had to the cause and object of the taking,

"whether under the taxing power—power of eminent do-
"main, or *the power of the government for local improve-*
"*ments*, and if found to be suitable or admissible in the
"special case it will be adjudged to be 'due process of law,'
"but if found to be arbitrary, oppressive and unjust, it
"may be declared to be not due process of law."

In the same case Justice Miller said :

"It is not possible to hold that a party has been with-
"out due process of law deprived of his property. When
"as regards the issue affecting it, he has had by the laws
"of the State a fair trial in a Court of Justice, according
"to *the mode of proceeding applicable to such a case.*"

In Hagar v. Reclamation District, &c., 111 U. S. 701, previously cited and also cited by Counsel for the plaintiffs, Justice Field delivering the opinion of the Court, said :

"All that is required 'as to the expense' is that the
"charge shall be apportioned in some just and reasonable
"mode according to the benefit received. If no direct or
"invidious discrimination in favor of certain persons to
"the prejudice of others be made it is not a valid objec-
"tion to the mode pursued that to some extent inequali-
"ties may arise.

"The 14th Amendment is found in State Constitutions,
"and is intended as an additional security against the arbi-
"trary deprivation of life and liberty, and the arbitrary
"spoliation of property. Neither can be taken without
"due process of law.

"It is sufficient to say that by 'due process of law' is
"meant one which follows the forms of law and is appro-
"priate to the case and just to the parties to be af-
"fected. * * It must be adapted to the end to be ob-
"tained, and whenever it is necessary for the protection
"of parties it must give them an opportunity to be heard
"respecting the justice of the judgment sought. * *

"*Where as in the present case the law prescribes how and*
"*when complaints will be heard, it gives all the notice required*
"*and the proceeding by which the value is determined, though*
"*it may be followed, if the tax is not paid by a sale of the*
"*delinquent's property is 'due process of law.'*"

I refer also to Barbier v. Connolly, decided at the present Session of the Court.

If this drainage law be tested by these decisions there can be no question as to its validity, for the plaintiffs had the privilege of being heard at every stage of the proceedings, and the record shows that they were heard and their objections carefully considered, not only by the Commissioners, but by the Supreme Court of the State.

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On the well settled rules of law, therefore the judgments of the State Court should be affirmed.

THEO. LITTLE,
*Counsel for Def's in Error.*